TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~103~~ 108

BENJAMIN F. FLANDERS, DEPUTY GENERAL AGENT OF THE UNITED STATES TREASURY DEPARTMENT, PLAINTIFF IN ERROR,

vs.

JOHN P. TWEED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED NOVEMBER 28, 1868.

SUPREME COURT OF THE UNITED STATES.

No. 307.

BENJAMIN F. FLANDERS, DEPUTY GENERAL AGENT OF THE UNITED STATES TREASURY DEPARTMENT, PLAINTIFF IN ERROR,

vs.

JOHN P. TWEED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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1 United States Circuit Court for the sixth circuit and eastern district of Louisiana.

Petition for writ of sequestration, affidavit, and order.—Filed April 21st, 1866.

JOHN P. TWEED
vs.
B. F. FLANDERS, SUPERVISING Special Agent of the U. S. Treasury Department.

To the honorable the judges of the United States Circuit Court for the sixth judicial circuit and eastern district of Louisiana.

The petition of John P. Tweed, who is a citizen of the State of Ohio, respectfully shows and states that he is the owner of and entitled to the posession of one hundred and twenty-three (123) bales of cotton, fifty bales of which are stored in the shippers' press, being a part of two hundred bales of same mark now stored there and
2 seventy-three bales of which are stored in Szymanski's press, all in the city of New Orleans; the weights and marks of which are given in the statements marked A and B hereto annexed, and made part of this petition.

That Benjamin F. Flanders, deputy general agent of the U. S. Treasury Department, who is a citizen of the State of Louisiana, unjustly retains posession of said cotton, and refuses to deliver the same to your petitioner.

That no part of said cotton is captured or abandoned property, under any act of Congress, nor by virtue of any military seizure, nor has the government of the United States any right, title, or interest in or to the same or any part thereof.

That said cotton is of the value of seventeen thousand five hundred dollars ($17,500.)

That said cotton is the property of your petitioner and is in the possession of said B. F. Flanders, and that he fears that said B. F.
3 Flanders will, during the pendency of this suit, dispose of and remove said cotton out of the jurisdiction of this court.

Wherefore your petitioner prays that the premises, the annexed bond and affidavit being considered, without prejudice to his right of action, to recover damages for the unlawful detention of said cotton, the said Benjamin F. Flanders may be cited to appear and answer this petition; that a writ of sequestration may issue from this honorable court, directing the U. S. marshal of this court to take said cotton into his possession and hold the same until the further order of this court, and that after due proceeding your petitioner have judgment, decreeing that said one hundred and twenty three (123) bales of cotton are his property, and that the same be delivered to him or, in default thereof, that he have judgment against the said B. F. Flanders for said sum of seventeen thousand five hundred dollars, with legal interest thereon, from judicial demand with privi-

4 lege upon the property sequestered, and for his costs and for all general and special relief.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Attorneys for Petitioner.

STATE OF LOUISIANA,
Parish of Orleans, ss:

Personally appeared John P. Tweed, the petitioner named in the above petition, who being duly sworn, says that all the facts and allegations set forth in his foregoing petition are true.

(Signed) J. P. TWEED.

Sworn to and subscribed before me this 21st day of April, 1866.

(Signed) F. B. VINOT, *D'y Cl'k.*

Order.

Let a writ of sequestration issue in this case as prayed for and according to law, upon plaintiff giving bond with good and solvent security in the sum of one thousnd dollars, conditioned as the law directs.

Writ of error from the U. S. Circuit Court fifth circuit and district of Louisiana.

JOHN P. TWEED, def't in error,
vs.
B. F. FLANDERS, SUPERVISING SPECIAL AGENT of the U. S. Treasury Department, plaintiff in error. } No. 3,857.

William Billings & Hughes for defendant in error; Samuel H. Torrey, U. S. att'y; I. S. Whitaker, D. Stuart, special counsel for plaintiffs, in error.

Returnable to the Supreme Court of the United States on the first Monday of December, 1868.

5 New Orleans, April 21, 1866.

(Signed) E. H. DURELL, *Judge.*

[50-cent revenue stamp, cancelled.]

Statements A and B, annexed to petition, and filed April 21st, 1866.

Statement marked "A."—Weights.

50 bales of cotton marked W. B. Aiken, stored in shipper's press.

508	416	462	492	434
542	470	440	453	424
439	429	437	425	414
526	500	468	388	494
464	460	379	433	454
390	505	500	381	514
453	490	527	514	483
473	379	420	425	470
466	503	464	459	383
418	423	464	450	494
4,679	4,575	4,561	4,420	4,564

Statement marked "D."

73 bales of cotton, stored in Szymanski's press.

W. B. Aiken,	510	520	465	512	482
46 bales.	476	506	466	454	475
	492	398	464	508	550
	452	465	460	450	520
	530	456	458	460	505
	568	428	520	515	478
	393	506	528	498	
	408	515	538	525	
	445	521	495	466	
	506	495	466	475	
	4,780	4,813	4,860	4,863	3,010

6 [G]	472 [B]				
L P	505		570	547	W. A. B 415
2 bales.	14 bales.		460	377	4 bales. 590
[W. C]	470		495	525	480
	470		513	445	463
3 bales.	505		512		
			493		
R T	440		512		
4 bales.	450		503		
	423		560		
	455		462		

United States Circuit Court.

Bond for sequestration.—Filed April 21st, 1866

JOHN P. TWEED
vs.
BENJ. F. FLANDERS, SUP. SPECIAL AG'T., &C. } No. 3,857.

Know all men by these presents, that we, John P. Tweed, as principal, and Joseph H. Oglesby, as surety, are held and firmly bound jointly and severally unto Benjamin F. Flanders, deputy general agent of the U. S. Treasury Department, in the sum of one thou-
sand dollars lawful money of the United States of America,
7 to be paid to the said Benjamin F. Flanders, in his said capacity, his heirs, executors, administrators and assigns, for which payment well and truly to be made, we bind ourselves, and each us by himself, and each of our heirs, executors, and administrators firmly, these presents. Sealed with our seals, and dated the 21st day of April, in the year of our Lord eighteen hundred and sixty-six.

Whereas John P. Tweed has this day presented a petition to the honorable the Circuit Court of the United States for the sixth Circuit, holding sessions in and for the eastern district of Louisiana, praying for a writ of sequestration against 123 bales of cotton, fully described in the petition of said plaintiff and obligor on file in the said court.

Now the condition of the above obligation is, that we, the above-
bounden John P. Tweed and Joseph H. Oglesby, will well and
8 truly pay to the said Benjamin F. Flanders, in his said capacity, the defendant in said suit and sequestration, all such damages as he may recover against us in case it should be decided that the said sequestration was wrongfully obtained.

[L. S.] (Signed) J. P. TWEED.
[L. S.] (Signed) JOS. H. OGLESBY.

Signed, sealed, and delivered in the presence of—
(Signed) F. B. VINOT.

[25-c. int. rev. stamp, affixed and cancelled.]

United States Circuit Court.

JOHN TWEED
vs.
BENJ. F. FLANDERS, SUP. SPECIAL AG'T OF THE U. S. Treasury Department. } No. 3,857.

Writ of sequestration issued April 21st, 1866.

United States of America, eastern district of Louisiana.

JOHN P. TWEED
vs.
9 B. F. FLANDERS, SUPERVISING SPECIAL agent, of the U. S. Treasury Department. } No. 3,857.

United States Circuit Court, eastern district of Louisiana.

The President of the United States of America to the marshal of the United States for the eastern district of Louisiana, greeting:

You are hereby commanded to sequester and take into your possession according to law 123 bales of cotton; 50 bales marked W. B. Aiken, stored in shipper's press, being a part of 200 bales of cotton of same mark now stored there, and 73 bales of cotton stored in Szymanski's press, marked thus: 46 bales, W. B. Aiken; 2 bales. [G,] l. p.; 3 bales, [W. C.;] 4 bales, R. T.; 14 bales, [B;] 4 bales, W. A. B.; which said 123 bales of cotton have been illegally taken possession of, and are now held by Benjamin F. Flanders, a citizen of the State of Louisiana; that said Flanders, under
10 cover and claims as supervising special agent of the U. S. Treasury Department, as alleged in the said plaintiff's petition on file.

And of what you may do in the premises make due return to our said court.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court, at New Orleans, this 21st day of April. 1866.

[SEAL OF COURT.] (Signed) CHAS. CLAIBORNE,
Clerk.
By F. B. VINOT, *D'y Cl'k.*

Marshal's return on foregoing writ.

Received April 21, 1866, and in obedience to the within writ, seized and took into my possession 50 bales in shipper's press, which had been repicked and repaired before seizure; served a notice of seizure of the said 50 bales on P. I. McGrath, yard clerk of shipper's press, where said cotton was seized, and obtained from said
11 clerk a receipt for said cotton in favor of the U. S. marshal; served also a notice of seizure on G. P. Ring, superintendent of Szymanski's press, where I seized and took into my possession 73

bales of cotton, and obtained from said superintendent a receipt for said 73 bales, in favor of the U. S. marshal.

This writ returned executed on the 21st April, 1866.

(Signed) I. I. PREIS,
D'y U. S. Marshal.

United States Circuit Court.

Citation to B. F. Flanders.

JOHN P. TWEED
vs.
BENJ. F. FLANDERS, SUP. SPEC. Agent of the U. S. Treasury Department. } No. 3,857.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

12

JOHN P. TWEED
vs.
BENJ. F. FLANDERS, SUPERVISING Special Agent of the United States Treasury Department.

You are hereby commanded to summon Benjamin F. Flanders, supervising special agent of the United States Treasury Dep't, and a citizen of the State of Louisiana, to comply with the demand of John P. Tweed, a citizen of the State of Ohio, contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the Circuit Court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's residence

13

is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of May, 1866.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 21st day of April, A. D. one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninetieth year.

[SEAL OF COURT.] (Signed) CHAS. CLAIBORNE,
Clerk.
By F. B. VINOT, *D'y Clerk.*

Marshal's return on the foregoing citation.

Received April 23d, 1866, and on the same day, month and year, served a copy of the within citation and petition of plaintiff, accompanying the same on Benj. F. Flanders, the supervising agent
14 of the U. S. Treasury Department, the defendant named herein, personally at his office, corner of Crossman and Levee streets, in this city.

New Orleans, April 24th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

United States Circuit Court, sixth circuit and eastern district of Louisiana, April term, 1866.

Motion of defendant to bond.

Extract from the minutes, April term, 1866:

NEW ORLEANS, *Saturday, May 5th*, 1866.

Court met pursuant to adjournment.
Present: Hon. E. H. Durell, district judge.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

On motion of Durant and Hornor, attorneys for defendant,
15 and of John K. Goodloe, district attorney for the United States for the eastern district of Louisiana, it is now ordered by the court that the defendant have leave to bond the 123 bales cotton sequestered in this suit, on giving security in the sum of dollars, conditioned as the law directs; the value of said cotton to be ascertained by H. I. Heartt and R. L. Robertson.

Rule taken by plaintiff to bond.

Extract from the minutes, April term, 1866:

NEW ORLEANS, *Saturday, May 5th*, 1866.

Court met pursuant to adjournment.
Present: Hon. E. H. Durell, district judge.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

On motion of Sullivan, Billings and Hughes, attorneys for plaintiff, it is ordered that the defendant show cause on the 7th day of
16 May, 1866, at 11 a. m., why the order herein granted, giving to the defendant leave to bond the property herein seques-

tered should not be set aside, and the plaintiff herein have leave to bond the same, upon giving the requisite security, and that until the bonding under this rule, all proceedings on the part of the defendant for bonding said cotton be stayed.

Rule taken by defendant to set aside writ of sequestration.

Extract from the minutes, April term, 1866:

NEW ORLEANS, *Saturday, May 5th*, 1866.

Court met pursuant to adjournment.
Present: Hon. E. H. Durell, dist. judge.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

17 On motion of Durant and Hornor, attorneys for the defendant, and of John K. Goodloe, district attorney of the United States for this district, it is ordered by the court, that John P. Tweed, plaintiff, do show cause, on Saturday, the 12th day of May, 1866, at 11 o'clock a. m., why the writ of sequestration heretofore issued herein should not be set aside on the grounds now filed.

United States Circuit Court.

Grounds filed May 5th, 1866.

JOHN P. TWEED
vs.
BENJ. F. FLANDERS. } No. 3857.

First. That on the face of the papers there is no legal ground for issuing the writ.

Second. That no statutes of the United States, and no rule of law, or judicial proceeding established by their courts, warrants the
18 issuing of a writ of sequestration against the defendant in possession of the property of the government, as its officer properly appointed and qualified, and the legal custodian of the property.

Third. That defendant is in possession of the cotton involved in this suit by virtue of a contract with the Secretary of the Treasury and the said Tweed in relation to cotton formerly belonging to the so-called confederate States; that the cotton in question is a portion of the same shipped to defendant, and that over this cotton so situated, and over the plaintiff's claim to it, if he really has any, this honorable court is entirely without jurisdiction. And even if all the allegations in plaintiff's petition be true, still this honorable court is without jurisdiction.

Fourth. Because the affidavit is illegal and defective, and the security on the bond not good and sufficient.

19 *Marshal's return on the foregoing rule and grounds.*

Received May 7th, and on the 8th day of same month and year served a copy of the within rule and grounds on B. F. Flanders, the defendant in the within suit, personally, at his office, corner of Crossman and Levee streets, in this city.

(Signed) M. EGAN,
D'y U. Marshal.

New Orleans, May 9th, 1866.

Order as to defendant's motion made on the 5th of May, 1867.

Extract from the minutes, April term, 1866:

NEW ORLEANS, *Monday, May 7th*, 1866.

Court meet pursuant to adjournment.
Present : Hon. H. H. Durell, dist. judge.

JOHN P. TWEED
vs.
B. F. FLANDERS, SUP. SP'L AG'T, &c. } No. 3,857.

Ordered that the entry herein made on Saturday last, allow-
20 ing the defendant to bond be set aside and annulled, the same having been erroneously entered, and that the following entry be substituted in its place.

Durant and Hornors, esquires, attorneys for defendant, and John K. Goodloe, esq., dist. attorney of the United States for the eastern district of Louisiana, this day moved the court to allow the defendant to bond the 123 bales cotton sequestered in this case upon his giving bond and security according to law, which motion the court took under advisement, and ordered that in the meantime the cotton be appraised by H. G. Hęartt and R. L. Robertson.

Order as to plaintiff's motion made on the 5th of May, 1867.

Extract from the minutes, April term, 1866:

NEW ORLEANS, *Monday, May 7th*, 1866.

Court met pursuant to adjournment.
Present: Hon. E. H. Durell, dist. judge.

JOHN P. TWEED
vs.
21 B. F. FLANDERS, SUP. SPEC. AGT., &c. } No. 3,857.

Ordered that so much of the motion made by plaintiff's attorneys on Saturday last as prays to set aside the order allowing the defendant to bond the cotton sequestered herein be stricken from the minutes, leaving the plaintiff's application to bond undisturbed.

Motion to allow the United States to bond.

Extract from the minutes, April term, 1866:

NEW ORLEANS, *Monday, May 7th*, 1866.

Court met pursuant to adjournment.
Present: Hon. E. H. Durell, dist. judge.

JOHN P. TWEED
vs.
B. F. FLANDERS, SUP. SPEC. AGT, &c. } No. 3,857.

22 John K. Goodloe, esq., United States district attorney, this day moved the court to allow the United States to bond the 123 bales of cotton sequestered herein upon the grounds set forth in the motion.

Whereupon the court took time to consider.

Motion to bond on the part of the United States.—Filed May 7th, 1866.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

On motion of John K. Goodloe, United States district attorney for the eastern district of Louisiana, and on suggesting to the court that the 123 bales of cotton involved and sequestered in this suit is the property of the United States, and was only held by defendant Flanders as a special agent of the Treasury of the United States, it is ordered that the United States be permitted to bond the same without security.

United States Circuit Court.

Affidavit and order.—Filed May 7th, 1866.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857 & No. 3,872.

U. S. Circuit Court.

CITY OF NEW ORLEANS, *State of Louisiana*:

John P. Tweed, being duly sworn, says he is the plaintiff in the suit now pending in the U. S. Circuit Court for the sixth judicial circuit and eastern district of Louisiana, entitled John P.
23 Tweed against B. F. Flanders, and numbered 3,857 and 3,872, on the docket of said court; that said Flanders has in his possession certain papers and documents, to wit: affiant's bills of sales for four hundred and ninety-five bales of cotton, now under seizure

in said suits by the marshal of said court, which papers are important evidence for affiant in the prosecution of said suits; that affiant fears that said B. F. Flanders will cause said papers to be removed and sent from this State and the jurisdiction of said court before the trial of said causes, or either of them. And thereby affiant fears he may be deprived of the advantage he expects to derive from the use of said papers and documents in evidence.

(Signed) J. P. TWEED.

Sworn to and subscribed before me this 7th May, 1866.

(Signed) F. B. VINOT, *Dep'y Cl'k.*

[5-cent. int. rev. stamp affixed and cancelled.]

24 U. S. Circuit Court.

In chambers.

JOHN P. TWEED *vs.* B. F. FLANDERS. } In chambers. No. 3,857 & No. 3,872.

On motion of Sullivan, Billings and Hughes, of counsel for plaintiff, and considering the affidavit of plaintiff herewith submitted, it is ordered that defendant produce and file in court the papers and documents now in his possession, referring to the four hundred and ninety-five bales of cotton claimed by plaintiff in said suits, particularly plaintiff's bill of sale for said four hundred and ninety-five bales of cotton now under seizure by the marshal of this court by process duly issued in said suits.

May 7th, 1866.

(Signed) E. H. DURELL, *Judge.*

25 United States Circuit Court [Circuit Court of the United States] for the sixth judicial circuit and eastern district of Louisiana.

Subpoena duces tecum.

JOHN P. TWEED *vs.* B. F. FLANDERS. } No. 3,857; No. 3,872.

The President of the United States to Benj. F. Flanders:

You are hereby commanded to be and appear, and to bring with you the papers and documents, now in your possession, referring to the 495 bales of cotton claimed by plaintiff in suits John P. Tweed vs. B. F. Flanders, No. 3,857, and No. 3,872 of the docket of said court, and particularly plaintiff's bills of sale for said 495 bales of cotton, now under seizure by the marshal of this court, before the

Circuit Court of the United States for the 6th circuit, in and
26 for said district, to be holden at the city of New Orleans on this the 7th day of May, 1866, then and there to be used in evidence in the above causes, now depending therein and to be tried, between John P. Tweed, plaintiff, and B. F. Flanders, defendant, at 11 o'clock a. m.; and herein fail not under the penalty of two hundred and fifty dollars.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 7th day of May, in the year of our Lord one thousand eight hundred and sixty-six, and in the 90th year of American independence.

[SEAL.] (Signed) CHAS. CLAIBORNE, *Clerk*,
By F. B. VINOT, *D'y Cl'k.*

27 *Marshal's return on the foregoing subpoena duces tecum.*

Received May 7th, 1866, and forthwith served a copy of the within subpœna duces tecum on B. F. Flanders, the defendant named herein, personally, at the U. S. district attorney's office, in the custom-house building, in this city.

New Orleans, May 7th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Order and monition as to documents called for in subpoena ducas tecum.

Extract from the minutes:

NEW ORLEANS, *Monday, May 7th*, 1866.

JOHN P. TWEED
vs.
B. F. FLANDERS, SUP. SPEC'L AG'T, &c. } No. 3,857.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, dist. judge.

28 On motion of Sullivan, Billings & Hughes, attorneys for plaintiff, it is ordered by the court that the defendant deposit with the clerk the documents called for in the subpoena duces tecum, and that after retaining certified copies of the same the originals be returned to the defendant.

U. S. Circuit Court.

Exceptions.—Filed May 7th, 1866.

JOHN P. TWEED
vs.
BENJ. F. FLANDERS. } N. 3,857.

Now into court, by his undersigned counsel, comes the defendant, deputy general agent of the U. S. Treasury Department, and to the petition served upon him in this case excepts and says:

First. That the property in dispute herein comes under the head

of captured property, and as such at the time of sequestra-
29 tion was in the possession and custody of the defendant, as the legal keeper thereof, for the use and benefit of the United States, the cotton in question having been turned over to the agents of the Treasury Department by the officers of the United States army, all with the knowledge of the plaintiff herein, who was a contractor with and a quasi officer of the government, and with whose knowledge and assent the property in question was regularly shipped to and received by defendant. Hence the proper cognizance of this suit belongs not to this tribunal, which is without jurisdiction.

Second. That the property herein sequestered is de facto and de jure "captured property," under the statutes of the United States, and should be dealt with as the law provides; it must be sold and its proceeds paid into the treasury, there to await the action of the Court of Claims when duly invoked; and all the courts of the
30 government are prohibited from taking original cognizance of such a case as the one before the court.

Third. That this court is without any jurisdiction to enquire into the mode of capture, the question of capture, or the time, manner, and circumstances of capture; because the question is not of a judicial nature.

Fourth. That this property, being the property of the government of the United States and in the hands of the proper officer of the Treasury Department, is irrepleviable; and no order of sequestration at the suit of the plaintiff could lawfully issue herein and take the property from the possession of the defendant.

Wherefore respondent prays that this exception be sustained, and this suit dismissed at plaintiff's costs, and general relief.

(Signed) DURANT & HORNOR,
Of Counsel.

31 U. S. Circuit Court.

Answer.—Filed May 7th, 1866.

JOHN P. TWEED
vs.
B. F. FLANDERS, SP'L AG'T U. S. T. DEP'T. } No. 3,857.

Now into court, by his attorneys, comes Benjamin F. Flanders, deputy general agent of the Treasury Department U. S., and, reserving the benefit of his exceptions hereinbefore pleaded, now answers to the petition of the plaintiff, as follows:

First. He denies the ownership of the 123 bales cotton, as alleged; he avers the said cotton is not the property of the plaintiff herein, but the property of the United States.

Second. He admits that as an officer of the U. S. government he held possession of said cotton at the time and before the writ of sequestration issued in herein, the said cotton, with other lots, having been regularly shipped to him and received by him, in his
32 official capacity, by and from the Treasury agent at Shreveport,

under a contract made with plaintiff and the U. S. Treasury Department in relation to cotton known as confederate States cotton captured in war and turned over to the Treasury Department by the officers of the U. S. army; that by virtue of said contract and certain services rendered by plaintiff, three-fourths of the number of bales received by defendant were turned over to plaintiff, and one-fourth was reserved by the United States under the adjudication provided for in the contract; that the said 123 bales form the one-fourth which is the property of the United States; and that the 372 bales claimed by plaintiff in his suit, No. 3,872 of the docket of this hon. court, are the other three-fourths coming to the plaintiff under the said contract, which is made part hereof; and respondent denies that the said 123 bales is in any manner the property of the
33 plaintiff, and he avers that it is de facto and de jure captured or abandoned property;

Third. Respondent is ignorant of the value of the cotton, and his means of knowledge not very large.

Fourth. Respondent admits that his orders from the Treasury Department are to ship this cotton to New York.

Wherefore respondent prays for judgment in his favor, decreeing the property sequestered to belong to the United States, and its immediate restoration to him as its legal and proper custodian, with all costs of court, and all further general and equitable relief.

(Signed) DURANT & HORNOR,
For Def't.

(Signed) JOHN K. GOODLOE,
U. S. Att'y for Def't.

Note of evidence on the trial of rule to bond, taken by plaintiff on May 5th, 1866, and filed May 7th, 1866.

34 JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

Plaintiff offered the following documents produced by defendant, viz: Nos. 1, 2, 2, 3, 4, 5, 6, 7, and bills of lading Nos. 8, 9, 10, 11, 12, 13, also document 14.

John P. Tweed sworn.

Plaintiff offered contract 15.

O. H. Burbridge sworn:

Documents 1, 2, 3, 4, 5, 6, 7, offered by plaintiff and filed in evidence, May 7th, 1866.

(Copy.)

Document 1.

JEFFERSON, *March 8th*, 1866.

Charles E. Goodwin

Bought of J. L. Carroll,

12 bales of cotton *a* $60 00 ..... $720 00
" " " 1 35 ..... 252 00

$972 00

Received payment.
(Signed) J. L. CARROLL,
Per B. H. EPPERSON.

Document 2.

JEFFERSON, TEXAS, *Feb'y 5th*, 1866.

35 Charles E. Goodwin

Bought of Mary S. Boyce.

50 bales of cotton, *a* $85, specie, per bale $4,250 00

Forty bales of the above cotton has been received and paid for by the said Goodwin; ten bales thereof is yet on the plantation of the said Boyce in Bowie county, Texas, under seizure by the agents of the Treasury Department of the U. S. gov't. As soon as the said ten bales of cotton are moved to Jefferson by said agents, the said Goodwin agrees to pay eight hundred and fifty dollars, and the cotton is to be no expense to the said Boyce after it leaves his plantation; the money to be paid to said Boyce or her agent. And the said Boyce hereby acknowledges the receipt of three thousand four hundred dollars.

(Signed) CHAS. E. GOODWIN.
N. C. GOULD,
Attorneys for Mary S. Boyce.

Signed duplicates.

36 *Document No.* 3.

Received, Jefferson, Texas, March 5th, 1866, from C. E. Goodwin, nineteen hundred and twenty dollars in specie, payment for 32 bales of cotton marked W. A. B., average weight 500 lbs. per bale, at 12 cts. per lb. in specie, which 32 bales are now under seizure by the U. S. Treasury agents, and are taken and received by said Goodwin subject to all risks, expenses, and charges that have or may accrue thereon. This shows that I have also sold 32 bales of cotton more or less, now on the plantation of W. A. Boyd, dec'd, in Bowie

county, at the same price, and under the same seizure and liable to the same seizure and expense and charges and risks, all of which are to be incurred and paid for by said Goodwin, and when said cotton is delivered at Jefferson, at the wharehouse of ,
37 having been ginned and baled and transported from said plantation in Bowie county at the expense of said Goodwin, upon the delivery thereof at Jefferson, the said Goodwin is to pay 12 cents per lb. therefor, exclusive of said expenses, charges, &c., in specie as per his obligation of even date hereof.

(Signed) ELIZA BOYD,
Executrix of W. A. Boyd,
By J. R. MOSS, *Ag't.*
SAM. F. MOULTY, *Att'y.*

Document 4.

JEFFERSON, TEXAS, *Feb'y* 26, '66.

Ch's E. Goodwin

Bought of Wright, Harrison & Co.

23 bales of cotton, marked R. T., *a* $75 00 per bale.... $1,725 00

U. S. currency.

Rec'd pay.
(Signed) WRIGHT, HARRISON & CO.

Endorsed on back: Above cotton transferred to J. P. Tweed.
(Signed) CHA'S E. GOODWIN.

Document 5.

SHREVEPORT, *March* 1*st*, '66.

38 Ch's E. Goodwin

Bo't of W. B. Akin,

386 bales cotton, *a* $80 00 per bale, in gold..... $30,880 00

Received payment by check on Judson & Divin, March 2d, 1866.
(Signed) W. B. AKIN,
Per B. H. EPPERSON, *Att'y.*

Document 6.

SHREVEPORT, LA., *Feb'y* 24*th*, 1866.

Received of Albert Adam $280 00 in currency for four bales of cotton marked L. P.
(Signed) NAT KENNER.

CLERK'S OFFICE.

I certify the foregoing to be true copies of the originals withdrawn by defendant with leave of court.

New Orleans, May 7th, 1866.

[SEAL OF COURT.] (Signed) F. B. VINOT, *D'y Cl'k.*

Document 7.

OFFICE CH'F ASS'T SP'L AG'T TR. DEP.,

39 *Shreveport, La., Mar. 8, 1866.*

Mr. J. P. Tweed, Shreveport, La.:

SIR: I am directed to inform you that the contract made by O. H. Burbridge, sup. sp'l ag't 3d agency, and approved by ass't sec. Treasury, with you for the purchase of government cotton, is this day revoked and discontinued.

I am, very respectfully, your obedient servant,

S. G. BURBRIDGE,

Ch'f Ass't Sp'l Ag't T. D., 3d Agency.

CLERK'S OFFICE.

A true copy of the original document withdrawn by defendant with leave of court.

New Orleans, May 7th, 1866.

[COURT SEAL.] (Signed) F. B. VINOT.

Bill of lading No. 8.

Shipped by Putnam, Kouns & Co., on board the steamboat
40 called the David Watts, whereof is master, now lying in the port of Shreveport, and bound for New Orleans, La., the following articles marked or numbered as below, which are to be delivered without delay in like order and condition at the said port (unavoidable dangers of navigation and fire only excepted,) unto Messrs. Scott, Cage & Co., subject to or assigns, he or they paying freight for the same at the rate of four dollars per bale, the order of O. H. Burbridge for adjudication.

In witness whereof the master, clerk or agent of the said steamboat hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated at Shreveport, March 13, 1866.

Endorsed: Insured under the open policy of O. H. Burbridge.

Marks, [B.] W. A. B.; articles, forty bales of cotton, thirty-two bales cotton; consignees: Scott, Cage & Co., Scott, Cage & Co.; whose acc't: J. P. Tweed, J. P. Tweed; charges: of the st'b't Lizzie Hamilton, as per accompanying bill, $3,361 95.

Not accountable for condition, weights or marks.

41 (Signed) R. M. HAYDOCK, *Clerk.*

[2-ct. int. rev. stamp, affixed and cancelled.]

Bill of lading No. 9.

Shipped in good order, by Elstner, Kingsworthy & Co., on board the good steamboat Maggie Hays, whereof Chute is master for the present voyage, and now lying at the port of Shreveport, bound for New Orleans, one hundred and fifty-eight bales of cotton specified below, which are to be delivered in like good order and condition, (the dangers and accidents of the navigation, and fire excepted) at the port of New Orleans, unto Messrs. Scott, Cage & Co., or to assigns, he or they paying freight for the same at $5,00 per bale, and charges thirteen hundred and nineteen 55-100 dollars.

In witness whereof the master or clerk of the said boat hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

42 Shreveport, La., March 2d, 1866.

Endorsed: Insured on open policy of O. H. Burbridge.

Marks.	No.	Consignees.	Ac. of whom.	Charges.
W. B. Aikin.	157	Scott Cage & Co.,		$1,319 55
F. M.	1	" " " for ac. of J. P. Tweed.		
	158			

Subject to order of—

Gen'l O. H. BURBRIDGE,
Sp'l Ag't, T. D'p't, for adjudication.
W. A. HURD, *Cl'k.*

Bill of lading No. 10.

Shipped in good order, and well conditioned by J. P. Tweed on board the steamboat called the Cuba, whereof is master, now lying at Shreveport, La., and bound for New Orleans, La., to say:

Four bales cotton (4.)
L. P.
4 b. c.

Marked and numbered as in the margin, and are to be delivered without delay in the like order and condition at the port of New Orleans, La., the dangers of the navigation and fire only
43 excepted, unto Scott, Cage & Co., or to assigns, he or they paying freight for the said cotton five 00-100 dollars p'r bale.

In witness whereof the master or agent of the said steamboat hath affirmed to four bills of lading all of this tenor and date, one of which being accomplished, the others to stand void.

Shreveport, La., Mar. 4th, 1866.

(Signed) W. G. MITCHELL.

Endorsed: Insured in open policy of O. H. Burbridge, sup. sp'l ag't, Trea. Dep't, New Orleans.

Bill of lading No. 11.

Shipped in good order and well condition by S. P. Griffin & Co. on board the steamboat called the Maggie Hays, whereof is master, now lying at the port of Shreveport, and bound for New Orleans, (26) twenty-six bales of cotton.

(W. B. Aiken) 26 bales; (23) twenty-three bales of cotton, (R. T. 23 bales,) being marked and numbered as in the margin, and
44 are to be delivered in the like order and condition at the port of New Orleans (the dangers of navigation and fire only excepted) unto Messrs. Scott Cage & Co. or to their assigns, he, or they, paying freight for the said cotton five dollars per bale ($5;) charges $620 44; said cotton subject to the order of adjudication of O. H. Burbridge, sup. sp'l ag't Treas'y Dep't, New Orleans.

Covered by open policy of O. H. Burbridge.

Ch'gs 26 b. c.	$252 65
23 b. c	367 79
	$620 44
	26
	13
	78
	26
	338

In testimony whereof the master or clerk of the said boat hath affirmed to five bills of lading all of this tenor and date, one of which being accomplished the others to stand void.

Shreveport, La., March 2d, 1866.

W. A. HURD, *Cl'k.*

Bill of lading No. 12.

Shipped in good order and well conditioned by M. Bell on board the steamboat called the Caddo, whereof Jacobs is master,
45 now lying at Shreveport, and bound for New Orleans, to say: twelve bales cotton, for ac. of J. P. Tweed, subject to the order of O. H. Burbridge, sp'l ag't, Treas'y Dep't, marked and numbered as in the margin, and are to be delivered, without delay, in the like good order and condition at the port of New Orleans (the dangers of the navigation and fire only excepted) unto Scott, Cage & Co., or to assigns, he or they paying freight for the said at five dollars per bale, and charges.

[W. C.]

Charges, $423 50.

In witness whereof the master or agent of the said boat hath affirmed to four bills of lading all of this tenor and date, one of which being accomplished the others to stand void.

March 7th, 1866.

(Signed) T. H. PITTS, *Cl'k.*

Bill of lading 13.

Shipped in bad order by Elstner, Kinsworthy & Co. on
46 board the good steamboat Maggie Hays, whereof Chute is master for the present voyage, and now lying at the port of Shreveport, bound for New Orleans, two hundred bales of cotton specified below, which are to be delivered in like good order and condition (the dangers and accidents of the navigation and fire excepted) at the port of New Orleans unto Messrs. C. A. Weeds & Co. or to assigns, he or they paying freight for the same at $5 00 per bale, and charges two thousand dollars.

In witness whereof the master or clerk of the said boat hath affirmed to three bills of lading all of this tenor and date, one of which being accomplished the others to stand void.

Shreveport, La., March 2d, 1866.

Marks.	No.	Consignees.	Ac. of whom.	Charges.
W. B. Aikin;	200;	C. A. Weeds & Co.;	subject to order of;	$2,000
		for ac. J. P. Tweed;		

Gen'l O. H. BURBRIDGE,
S. S. Ag't T. D'p't for adjudication.

Not ac. for loss in weight or damage.
(Signed) W. A. HURD, *Cl'k.*

Endorsed: Insured on open policy of O. H. Burbridge.

47 *Copy of document* 14.

TREASURY DEPARTMENT, *April 2d*, 1866.

SIR: I have received your letter of the 22d ult., with enclosures relative to certain cotton claimed by Mr. Tweed and others, but your telegram on the same subject therein referred to was not received.

Your

B. F. Flanders, esq., dep'ty gen'l ag't, Treas'y Dep't, New Orleans, La.

Your action in the premises, as reported, is approved. Had you done less I should have regarded you as failing to do your whole duty.

From the facts stated Mr. Tweed manifestly transcended the authority of his contract with the department, and violated its spirit and intent by his course in the premises, but inasmuch as it appears that he bought the cotton at a price near its value at the place of purchase, and actually paid therefor, I am disposed to give
48 him the benefit of the provisions of the contract in disposing of the case, it being understood, however, that this decision will not be regarded as a precedent in the disposition of other cases of a similar character, which may hereafter be brought to the notice of the department.

You are therefore authorized, if you think it best, to make the distribution of the cotton in question, contemplated by the contract referred to shipping to the cotton agent at New York, to be sold as captured property, the portion received as the government's share.

Although I am advised of the general character and object of the contract I am not familiar with its details, no copy having been transmitted to the department, and am therefore unable to give you more specific instructions in the case, but I am willing to leave the whole matter in your hands, with the above indication of my views.

49 Please report at once your action hereunder.

Respectfully,

H. McCULLOCH,
Secretary of the Treasury.

CLERK'S OFFICE.

A true copy of the original, withdrawn by defendant with leave of court.

New Orleans, May 7th, 1866.

[COURT SEAL.] (Signed) F. B. VINOT, *D'y Cl'k.*

Contract 15.

Whereas it is represented that large lots of cotton which formerly belonged to the late so-called confederate States still remain uncollected upon and near the Red river, and the Ouachita river and their tributaries, which are in the possession of persons claiming to be the owners thereof, and the marks upon which have been destroyed, and the identification of which is difficult, if not impossible:

And whereas it is also represented that the best mode of
50 securing this cotton to the United States is to make satisfactory arrangements with the holders, under which they will release their pretended claim to it, and co-operate with the agents of the government in sending it forward:

Now, therefore, it is hereby agreed by and between John P. Tweed and Oscar H. Burbridge, supervising special agents appointed by the Secretary of the Treasury, to collect captured cotton in the third special agency, as follows, viz:

Said Tweed hereby agrees to furnish all the money necessary to procure the cotton aforesaid, and all assistants necessary for the purpose, and all necessary means of transportation, and to use all proper efforts to procure as much cotton of the description aforesaid, within the section aforesaid, as can be procured, prepared for shipment and transported to New Orleans, and delivered there in good
51 shipping order, at a cost of not exceeding three-fourths its value, and to deliver the same to said Burbridge in good shipping order, with receipted bills of sale or discharges thereof from the holders, free of all expense or cost in any way connected therewith.

And said Burbridge hereby agrees that upon delivery to him in New Orleans, as aforesaid, of each lot of cotton so procured, with

the receipted bills of sale or discharges from the holders thereof as aforesaid, and free and discharged of all cost and expense of every description in any way connected therewith, he will pay and deliver to said Tweed three-fourths of the same of average quality, as compensation in full for all services performed, and for all cost and expenses incurred by him in relation thereto, which three-fourths so paid and delivered to him shall be regarded as a sale to him by the United States, and shall not be subject to payment of internal
52 revenue, or if held subject to such payment the same shall be made by said Burbridge.

It is further mutually agreed that this contract shall be promptly submitted to the Secretary of the Treasury, by said Burbridge, for his approval; and that if it shall not be approved, it shall thereby be terminated; and that if it shall be approved it shall nevertheless be at all times subject to termination by the Secretary of the Treasury, or by his direction; any termination, however, to be subject to the completion of transactions commenced under it, in accordance with the provisions hereof, previous to receipt by said Tweed of notice of such termination.

In witness whereof we have hereunto set our hands this twenty-third day of January, A. D. 1866.

(Signed) J. P. TWEED,
(Signed) O. H. BURBRIDGE,
Sup. Sp'l Ag't, 3d Ag'y T. D.

Rule to bond taken by plaintiff on 5th May, 1866.—*April term*, 1866.

53 Extract from the minutes:

NEW ORLEANS, *Monday, May 7th*, 1866.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, dist. judge.

JOHN P. TWEED
vs.
B. F. FLANDERS, SUP. SPEC. AG'T, &C. } No. 3,857.

The rule to bond taken by plaintiff on the 5th instant came up. Sullivan, Billings & Hughes for plaintiff in rule; Durant and Hornor for defendant in rule, when after hearing the pleadings evidence the court took time to advise.

Circuit Court of the United States for the 6th circuit and eastern district of Louisiana.

Claim of the United States.—Filed May 8th, 1866.

54 JOHN P. TWEED
vs.
BENJ. F. FLANDERS. } Claim of United States.

And now comes the United States, by John K. Goodloe, their district attorney for the eastern district of Louisiana, and file their

claim to the 123 bales of cotton sequestered by plaintiff in this suit. And said United States, by their said attorney, say that they are the sole, true and bona-fide owners of said cotton, and that no other person has any claim or right to, or interest therein, all of which they will show to the court by due proof. They further state that said cotton was in possession of and held by Benj. F. Flanders, the defendant herein, at the time it was sequestered for the United States, and as a special agent of the Treasury Department of the said United States; and that in holding the same as aforesaid he
55 was only acting as agent of and for the benefit of said United States; wherefore the said United States pray that their claim to said cotton be allowed and adjudged good, and that the proceedings instituted by plaintiff against the same may be disallowed and dismissed with costs and damages.

(Signed) JOHN K. GOODLOE,
U. S. A'tty.

Circuit Court.

Affidavit to take testimony de benne esse.—Filed May 7th, 1866.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 1.

SAME
vs.
SAME. } No. 2.

PARISH OF NEW ORLEANS, *State of Louisiana, ss:*

John P. Tweed, the plaintiff in the above-entitled actions, being duly sworn, says: That Stephen Burbridge is a material witness
56 to establish his case therein, and that he is about to depart from this State, so that he cannot, as deponent fears and believes, have the benefit of his testimony unless the same be taken de benne esse.

(Signed) J. P. TWEED.

Sworn and subscribed before me this 8th day of May, A. D. 1866.
(Signed) F. B. VINOT, *D'y Cl'k.*

Extract from the minutes of May 8th, 1866:

Motion and order to take testimony of Stephen Burbridge.

JNO. P. TWEED
vs.
B. F. FLANDERS. } 3,857.

SAME
vs.
SAME. } 3,872.

On motion of Sullivan, Billings and Hughes, attorneys for plaintiff in said actions, and on filing affidavit, it is ordered that the testi-

mony of Stephen Burbridge be taken before Charles Claiborne esq., U. S. commissioner, de benne esse, to be used upon
57 the trial of said actions, and that the defendant be notified thereof, and that said testimony be taken on the 9th day of May, A. D. 1866, at the clerk's office at 2 o'clock p. m., and that a subpœna issue commanding said witness to appear at said time and place.

Circuit Court of the United States for the 6th circuit and eastern district of Louisiana.

Notices by United States Commissioner, issued May 8th, 1866.—Notice to defendant.

J. P. TWEED
vs.
B. F. FLANDERS, SUP. SPEC. Ag't, &c. } No. 3,857.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,872.

Please to to take notice that Stephen Burbridge, a witness whose testimony is necessary in these causes, and who is about
58 to depart from this State, will be examined de benne esse on the part of the plaintiff in the above-entitled causes, before me, a commissioner duly appointed by the Circuit Court of the United States for the eastern district of Louisiana, under and by virtue of the act of Congress in such cases made and provided, at my office at the custom-house in the city of New Orleans, on the 9th day of May inst., at 2 o'clock in the afternoon of that day, at which time and place you are hereby notified to be present and put interrogatories if you shall think fit.

Dated New Orleans, the 8th day of May, A. D. 1866.

Yours, etc.

[SEAL.] (Signed) CHS. CLAIBORNE,
U. S. Commissioner.

Marshal's return on the foregoing notice.

Received May 8th, 1856, and same day, month and year
59 served a copy of the within notice on B. F. Flanders, esq., personally, at his office, corner of Crossman and Levee street, this city.

New Orleans, May 9th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Circuit Court of the United States for the 6th circuit and eastern district of Louisiana.

Notice to District Attorney.

J. P. TWEED
vs.
B. F. FLANDERS, SUP. SP'L Ag't, &c. } No. 3,857.

J. P. TWEED
vs.
B. F. FLANDERS, SUP. SP'L Ag't, &c. } No. 3,872.

Please to take notice that Stephen Burbridge, a witness whose testimony is necessary in these causes, and who is about to depart from this State, will be examined de benne esse on the part of the plaintiff in the above-entitled causes, before me, a commissioner
60 duly appointed by the Circuit Court of the United States for the eastern district of Louisiana, under and by virtue of the acts of Congress in such cases made and provided, at my office, at the custom-house in the city of New Orleans, on the 9th day of May inst., at 2 o'clock in the afternoon of that day, at which time and place you are hereby notified to be present and put interrogatories if you shall think fit.

Dated New Orleans, the 8th day of May, A. D. 1866.

Yours, etc.,

[SEAL.] (Signed) CHS. CLAIBORNE,
U. S. Commissioner.

Marshal's return on the foregoing notice.

Received May 8th, 1866, and same day, month and year served a copy of the within notice on John K. Goodloe, esq., the
61 United States district att'y, personally, at his office, in the custom-house building in this city.

New Orleans, May 9th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

United States Circuit Court, eastern district of Louisiana.

Notice to appraisers issued May 8th, 1866.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

To H. G. Heartt and R. L. Robertson:

Take notice that you have been this day appointed appraisers for the purpose of ascertaining the value of the property libeled in this

case, and you are to file the report of your appraisement within the shortest possible delay.

By order of court.

New Orleans, May 8th, 1866.

(Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

62 Received May 8th, 1866, and same day served a copy of the within notice on Heartt and Robertson, appraisers, in the hands of R. L. Robertson, personally, at his office, 57 Camp street, in this city.

New Orleans, May 9th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Testimony of S. Burbridge.—Filed May 9th, 1866.

J. P. TWEED
vs.
B. F. FLANDERS. } 3,857, 3,872—2 cases.

General S. G. Burbridge, sworn for plaintiff, says: In the month of March, 1866, I was sub-assistant supervising agent of the Treasury Department, and was in charge of the cotton bureau at Shreveport and for the whole Red river region. Prior to Mr. Tweed's
63 purchasing the cotton, I had a notice of the fact that the contract was annulled. The intelligence first reached me by a letter from Mr. Mellen to Mr. Tweed; next by a telegraphic dispatch from O. H. Burbridge, supervising agent of the Treasury Department at New Orleans. This letter from Mr. Mellon to Mr. Tweed was shown to me by the latter; the purport of the dispatch I communicated to Mr. Tweed. All this, as well as I recollect, occurred before the purchase of cotton by Tweed. Mr. Tweed consulted me before his purchase as to the character of the cotton. I told him there was no evidence in my possession against the cotton at that time. I advised him that it was, as near as I could find out, private cotton. Mr. Tweed stated to me at that time that he could not afford to buy the cotton at that price under the contract, and that he was
64 proposing buying it outside of the contract. I made no objection to it, as I thought it was right and proper for him to do so. My judgment was based upon the character of the cotton, being, in my judgment, private cotton and not included in the contract.

Cross-examined.

A written notice was given to Mr. Tweed of the annulment of the contract after the purchase of the cotton.

(Signed) S. G: BURBRIDGE.

Sworn to and subscribed before me, this 9th day of May, 1866.
[SEAL.] (Signed) CHS. CLAIBORNE,
U. S. Comm'er.

U. S. Circuit Court.

Testimony for plaintiff.—Filed May 12th, 1866.

JOHN P. TWEED
vs.
B. F. FLANDERS.

Testimony of J. H. Oglesby, witness produced and sworn on the part of the plaintiff; taken by consent:

65 I executed the bond in this case as surety. I reside in the city of New Orleans and am worth more than ten thousand dollars over and above all my debts and liabilities.
(Signed) J. H. OGLESBY.

Jurat waived May 12th, '66.

D. & H., *for Def't.*

Order.

Extract from the minutes of May 12th, 1866:

Rule taken by plaintiff on 5th May, 1866, made absolute.

J. P. TWEED
vs.
B. F. FLANDERS, SUP. SPEC. Agt., &c. } 3,857.

For reasons orally assigned by the court, it is ordered that the rule taken by the plaintiff on 5th instant be made absolute, and that John P. Tweed be permitted to bond the 123 bales cotton sequestered in this case, and that the defendant's application of 5th instant, and that of the United States attorney of the 7th instant to bond said cotton, be refused.

Order.

Extract from the minutes of May 12th, 1866:

66 Continuance of defendant's rule.

JOHN P. TWEED
vs.
B. F. FLANDERS, SUP. SPL. Agt., &c. } No. 3,857.

The rule taken by defendant and the United States attorney on 5th instant to set aside the writ of sequestration, was called up. Durant & Hornor and John K. Goodloe United States attorney for plaintiff in rule, Sullivan, Billings & Hughes for defendant in rule. When, after hearing counsel, it is ordered that the same be continued till the 2d day of June next at 11 a. m.

Appraisers' report.—Filed May 15th, 1866.—Appraisers' report of cargo.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

OFFICE OF THE UNITED STATES APPRAISERS,
67 *New Orleans, May 14th,* 1866.

We the undersigned, appraisers of this honorable court, duly appointed and sworn, have the honor to report that we have this day carefully examined the cargo of cotton and are of opinion that the actual marked value or wholesale prices of the said merchandise are this day, and we do therefore appraise the same as follows:

Marks.—Shipper's and planter's mark.	No.	Description of merchandise or vessel.	Value.
		In Szymanki's press, in name of Scott, Cage & Co.:	
(F) Aikin. (G) [W. G.] 3. R. T. 4.	46	Bales ordinary, 21,666 lbs. 28c	$5,466 48
L. P. 2.	9	" good ordinary, 4,239 lbs., 30 c.	1,271 70
(B)	18	" low " repacked, and damaged part heated, 8,478 lbs., 25c	2,119 50
		Average, 471 lbs. each.	
		In shipper's press, in name of C. A. Weed & Co.:	
W. B. Aikin.	50	Bales ordinary, 23,800 lbs. a 25c	5,950 00
	123	Average weights, 476 lbs.	$14,807 68

68 These bales have been reboxed from the yard and re-

packed; make a good outside appearance, &c., &c., &c. Average weights 476 lbs.

With the exception of the reboxed (50 bales cotton,) all the other cotton is ragged, in bagging and in bad order.

(Signed) H. G. HEARTT,
" RICH'D L. ROBERTSON,
U. S. Appraisers, New Orleans.

To the Hon. E. H. Durell, Judge U. S. District Court for the eastern district of Louisiana, New Orleans.

Certificate attached to appraisers' report.

Weight 10 bales cotton, "mark" W. B. Aikin, weighed by order of the U. S. appraisers:

(Duplicate.)

	518
	460
	410
	500
69	465
	433
	503
	378
	430
	463
	4760

"Average," 476 lbs.

New Orleans May 13th, 1866.

(Signed) L. F. DEGRUY,
Weigher of the 50 bales reboxed, W. B. Aiken.

United States Circuit Court.

Appraisers' bill.—Filed May 15th, 1866.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

APPRAISERS' DEPARTMENT,
New Orleans May 15th, 1866.

To Appraiser's Office, Dr.

May 15, 1866.	For examination appraisement, and ascertaining marked value of property and merchandise as per appraisement rendered, $14,807 68, @ 1 per cent	148 08
70	Weighing 10 bales for average, 25cts	2 50
	Turning in and out cotton, press charges 123 bales, 2½ cts	3 10
		$153 68

Order to release cotton.

Extract from the minutes of May 15th, 1866:

JOHN P. TWEED
vs.
BENJ. F. FLANDERS, SUP. SPEC. Ag't U. S. Treas'y Dep't. } No. 3,857.

The appraisers having filed their report showing the value of the 123 bales cotton sequestered herein, to be $14,807 68c, the plaintiff and his sureties, Sam. Smith, Jos. H. Oglesby and A. D. Grieff, appeared in court and executed a bond in that amount. And the said sureties having satisfactorily proven their solvency, and the bond being acknowledged in open court, it was ordered that the cotton be released and delivered to the plaintiff.

71 *Release bond.—Filed May 15th, 1866.*

Know all men by these presents, that we, John P. Tweed, as principal, and J. H. Oglesby for the sum of $5,000, A. D. Grieff $5,000, and Sam'l Smith $5,000 as sureties, are held unto Cuthbert Bullitt, United States marshal for the eastern district of Louisiana, in the sum of fourteen thousand eight hundred and seven $\frac{68}{100}$ dollars for the payment whereof, to the said Cuthbert Bullitt, U. S. marshal, his heirs, executors, administrators or assigns, we jointly and severally bind ourselves, our heirs, executors and administrators respectively by these presents; as witness our respective names hereunto affixed, at New Orleans this 15th day of May, A. D. 1866.

Whereas in and by virtue of a writ of sequestration issued out of the honorable the United States Circuit Court for the sixth circuit and eastern district of Louisiana, holding sessions in the city
72 of New Orleans, at the suit of John P. Tweed vs. B. F. Flanders, supervising special agent of the U. S. Treasury Department, and numbered 3,857 on the docket of said court, and which suit is now pending therein, the following described property, to wit: One hundred and twenty-three bales of cotton have been seized, taken into custody of the United States marshal and detained according to law; but the same has been released and delivered to the said John P. Tweed upon the appearance of the said Tweed in the said suit and delivering to the said Cuthbert Bullitt, United States marshal, the present obligation, which has been executed in pursuance of an order of said court, issued on the twelfth day of May, 1866.

The condition of which is such, that if the said plaintiff, John P. Tweed, shall not send the above described property out of the jurisdiction of the court, that he will not make an improper use of
73 it, and that he will faithfully present the same, in case he should be decreed to restore the same to the said U. S. marshal, or shall satisfy such judgment as may be rendered in the suit

pending as above mentioned, then this obligation to be void or else to remain in full force.

(Signed) J. P. TWEED.
(Signed) JOS. H. OGLESBY.
" SAM. SMITH.
" A. D. GRIEFF.

Signed and delivered in open court.

[25-c. int. rev. stamp affixed and cancelled.]

United States Circuit Court.

Writ of release.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

EASTERN DISTRICT OF LOUISIANA, *ss*:

NEW ORLEANS, CLERK'S OFFICE.

The President of the United States of America, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

74 Whereas John P. Tweed, claimant of 123 bales cotton, sequestered herein, hath obtained leave of court to bond the same, and which said order is now of record in this office:

You are hereby authorized to release the said 123 bales cotton from seizure, and them to restore to the possession and custody of said claimant, he having given bond conditioned as required by law, and otherwise complying with the rules of the court, &c., and make return hereon of your doings in the premises.

Witness the Hon. S. P. Chase, Chief Justice of the Supreme Court of the United States, at New Orleans, this 15th day of May, A. D. 1866, and the 90th year of the independence of the United States.

(Signed) F. B. VINOT, *D'y Cl'k.*

Marshal's return.

75 Received, May 16th, 1866, and same day, month and year, delivered to the plaintiff, John P. Tweed, (123) one hundred and twenty-three bales of cotton, by going to the shipper's press in this city and giving written orders to the yard clerk of said press to turn over said cotton unto said Tweed, which was done in obedience to this writ.

New Orleans, May 16th, 1866.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

Rule taken by plaintiff on the appraisers.

Extract from the minutes of May 22d, 1866:

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,857 and 3,872.

On motion of Sullivan, Billings and Hughes, attorneys for the plaintiff, and upon suggesting to the court that the appraisers' fees are excessive, the same having been paid into the registry of this
76 court under protest, it is ordered that the appraisers' herein show cause, on the 29th May, 1866, at 11 a. m., why their fees, as charged, should not be reduced, and why such order should not be made in the premises as may be just.

Marshal's return.

Received May 23d, 1866, and same day, month and year served a copy of the within rule on the appraisers named herein personally, each at their respective offices.

(Signed) M. EGAN,
D'y U. S. Marshal.

New Orleans, May 26th, 1866.

Answer of appraisers to rule.—Filed May 29th, 1866.—Rule.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3872, 3857.

The defendants, H. G. Heartt, and Captain R. L. Robertson, appraisers to this honorable court, appear personally to
77 answer for the plea of excessive charges, and state that on the reception of the order to examine and appraise 372 bales cotton, in two presses in Skimanski's press, in the 3d district, and Shipper's in the first district, that they repaired with their brokers, classers, cutters and clerks to Skimanski's press to have turned out 222 bales, as per appraisement hereto annexed, and proceeded to their labours, when a violent rain storm came up; after examining part, and fearing damage desisted. The next day a storm brewing, did not consider it safe. The next day, rolled out, assorted, sampled, (marked papers,) classed, and cotton valued according to market price. The next day proceeded to Shipper's press, and went through similar process; 150 bales cotton rolled out, assorted, sampled, (marked papers,) classed, and cotton valued according to market price, making 495 bales.

This department appraisers pay office rent, their clerk hire, broker's blanks, stationary, &c., &c., themselves; it is no
78 charge upon this court or the United States.

The customary charge by all respectable cotton factors in

New Orleans for the same is 2½ per cent. commission, and the owner of the cotton pay all charges, as per annexed account No. 1, sales submitted, which was previous to the war, since which everything has advanced to gold standard. This department's rent has been doubled, and clerk's hire advanced. We admit, had the advice of the learned counsel, No. 3871 Mollnoix & Bell *vs.* Flanders, been taken a few days since, when the party, as the learned counsel contended, and was so anxious to bond, for fear other parties, to use his expression, "might jump on it, he said, to save time, 'tis unnecessary to go and see it, put it down at $100 per bale and render appraisement, unsight unseen;" but as long as we hold the responsible situation, representing this honorable court, and conscious
79 of the faithful performance of our duty, other parties would have ruled us into court to know if we examined critically the cotton, and our answer under oath would be, No. The learned judge in his duty would exclaim, "Henceforth be no officer of mine."

In the course of the examination at Skimanski's press I discovered the cotton was so heated you could not put your hand inside the bales, and 'twas hot enough to remove the skin from your hand. I saw Mr. Tweed and informed him that spontaneous combustion would ensue, and the press burned up. He thanked me. I gave him the advice of one experienced merchant to another, not as an appraiser. I have not sent him in any bill yet for professional advice as a merchant, nor shall I.

This department has to correct many errors before they can act; cotton presses are shut upon us after travelling all over the town, and cab-hire $2 an hour, until the attorneys get their papers proper, when we can proceed with authority, and demand entrance
80 as officers of this court. Our department is perfectly systematised, and conducted correctly, neither turning to the right or the left, showing favour to none, comporting to the high dignity of his honor and this court. All of which is respectfully submitted by—

(Signed) H. G. HEARTT,
RICH'D L. ROBERTSON,
U. S. Appraisers to U. S. Court.

New Orleans, May 29th, 1866.

The appraisers are liable, or it may be so construed, that should they put out cotton in the rain, whereby it may be damaged, and they are responsible equally as a cotton factor; as [as] there doubtless will be a suit for damages against B. F. Flanders for detention, difference of price, &c., that in consequence of the strict performance of their duty, the appraisers be allowed the same compensation as cotton factors, say 2½ per cent. on valuation or sale.

81 *Appraisers' report, annexed to answer.—Appraisers' report of cargo.*

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3857.

OFFICE OF THE UNITED STATES APPRAISERS,
New Orleans, May 14th, 1866.

We, the undersigned appraisers of this honorable court, duly appointed and sworn, have the honor to report that we have this day carefully examined the cotton, and are of opinion that the actual market value, or wholesale prices, of the said merchandise are this day, and we do therefore appraise the same, as follows:

Marks.—Shipper's and planter's mark.	No.	Description of mdse. or vessel.	Value.
		In Skimanki's press, in name of Scott, Gage & Co.:	
(F) Aikin. (G) W. G. 3. R. T. 4.	46	Bales ordinary, 21,666 lbs., 28c.....	$5,466 48
L. P. 2.	9	" good ordinary, 4,239 lbs., 30c.	1,271 70
(B.)	18	" low " repacked and damaged, part heated, 8,478 lbs., 25c..... Average, 471 lbs. each.	2,119 50
82			
		In Shipper's press, in name of C. A. Weed & Co.:	
W. B. Aikin.	50	Bales ordinary, 23,800 lbs., a 25c.....	5,950 00
In all.....	123	Average weights, 476 lbs.	$14,807 68

These bales have been reboxed from the yard, and repacked, make a good outside appearance, &c., &c., &c. Average weights 476 lbs. With the exception of the reboxed (50 bales cotton) all the other cotton is ragged, in bagging, and in bad order.

(Signed) H. G. HEARTT,
" R. L. ROBERTSON,
U. S. Appraisers, New Orleans.

To the Hon. E. H. Durell, judge U. S. District Court for the eastern district of Louisiana, New Orleans.

Certificate attached to appraisers' report.

Weight 10 bales cotton, marked W. B. Aiken, weighed by order of the U. S. appraisers:

	518
	460
83	410
	500
	465
	433
	503
	378
	430
	463
	4,760 lbs.

Average 476 lbs.
New Orleans, La., May 13th, 1866.
(Signed) L. T. D. I. MEY, *Weigher.*

Hearing and submission of rule.

Extract from minutes of May 29th, 1866:

JOHN P. TWEED *vs.* B. F. FLANDERS. } No. 3857.

The rule taken on the 22d instant came up for trial.

Sullivan, Billings & Hughes, for plaintiff in rule; H. G. Heartt, in propria persona.

When, after hearing the parties, the court took time to advise.

Order.—Appraisers' fees taxed.

84 Extract from minutes of May 30th, 1866:

JOHN P. TWEED *vs.* B. F. FLANDERS. } No. 3857.

Ordered, that the fees of the appraisers be taxed at three-fourths of one per cent. on the amount reported by them as the value of the property.

Order.—Continuance of rule taken 5th May, 1868.

Extract from minutes of June 2d, 1866:

JOHN P. TWEED *vs.* B. F. FLANDERS, &c. } No. 3857.

Ordered, that the rule taken by defendant and the United States attorney, on the 5th ultimo, to set aside the writ of sequestration, be continued indefinitely.

Commission for plaintiff.

Issued January 11th, 1867, returned and filed January 16th, 1867, in cases No. 3857 and No. 3899:

85 Circuit Court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

To Nathaniel Appleton, esq., or any U. S. commissioner in New York, or to any officer authorized to administer oaths:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you J. P. Tweed and Charles A. Goodwin, witnesses, and them duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in the causes now depending in the said court, wherein John P. Tweed is plaintiff and Benjamin F. Flanders is defendant; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and
86 send also this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 11th day of January, anno Domini 1867, and the 91st year of the independence of the United States of America.

[SEAL.] (Signed) CH'S CLAIBORNE, *Clerk*,
By F. B. VINOT, *D'y Cl'k.*

United States Circuit Court for the fifth judicial circuit, holding its sessions in the district of Louisiana.

Interrogatories-in-chief.

JOHN P. TWEED
vs.
BENJAMIN F. FLANDERS. } Nos. 3857 and 3899.

Interrogatories to be propounded to J. P. Tweed, Charles A. Goodwin, to be examined in the city of New York, witnesses to
87 be produced, sworn and examined on behalf of the plaintiff herein.

Interrogatories to be propounded to J. P. Tweed, plaintiff herein.

1st. What is your name, age and occupation?

2d. Did you, on or about the day of , 1865, enter into a contract with the government for the purchase of government cotton? If yea, state whether that contract was carried out. If that contract was not carried out, state whether anything, and what, prevented.

3d. How was said contract terminated? If you say it was revoked, state fully and particularly when, where and by whom you learned of its revocation.

4th. Did you, during the early part of the year 1865, purchase a lot of cotton, amounting to about four hundred and ninety-five (495) bales, of which the one hundred and twenty-three (123) bales sequestered in this suit formed a part? If yea, where, when,
88 and when compared with the time you learned of the revocation of said contract, if you say it was revoked? At what price, and how did the price you paid compare with the market price? If you made such purchase, did you, before making the same, confer with any officer of the government of the United States? If yea, state what officer, giving his official position, and state what transpired at such conference, or what was its result.

5th. If you say you purchased such a lot of four hundred and ninety-five (495) bales of cotton, state to whom you shipped it, and what you did in connection with such shipment. If you say you shipped it to Oscar H. Burbridge, state under what circumstances, and what his action was with reference to the same.

6th. Give, in detail, a statement of the action of the defendant, Benjamin F. Flanders, with reference to said cotton, and of
89 your own, in connection with it.

7th. State whether you sustained damage by defendant's seizure and detention of said cotton. If yea, state, if you can, the amount of damage which you sustained, giving the various items of such damage.

8th. State any other matter or thing which may make for the benefit of yourself, the plaintiff herein, as fully and minutely as if you had been particularly interrogated with reference thereto.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Pl'ff's Att'ys.

No cross-examination.

(Signed) P. H. MORGAN,
U. S. Att'y.

Interrogatories to be propounded to Charles B. Goodwin.

1st. What is your name, age, residence, and occupation?

2d. Do you know the parties plaintiff and defendant herein, and if so, how long have you known them?

3d. Do you know of the plaintiff purchasing about four hun-
90 dred and ninety-five (495) bales of cotton, a portion of which has been sequestered in this suit? If yea, were you instrumental in making such purchase? State all you know about the price paid for said cotton.

4th. Do you know anything about the history of said cotton prior to such purchase? If yea, state fully and in detail all you know of such history.

5th. State any other matter or thing which may make for the benefit of the plaintiff herein as fully and minutely as if you had been particularly interrogated with reference to the same.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Att'ys for Pl'ff.

No cross-examination.

(Signed) P. H. MORGAN,
U. S. Att'y.

Testimony taken under commission.

Depositions of witnesses produced, sworn and examined by virtue of the annexed commission, on the 8th day of February, in the
91 year of our Lord one thousand eight hundred and sixty-seven, at the city of New York, in the county and State of New York, before me, Nathaniel Appleton, a commissioner named in said commission, in certain causes now depending in the Circuit Court of the United States for the fifth judicial circuit in and for the district of Louisiana, between John P. Tweed, plaintiff, and Benjamin F. Flanders, defendant, on the part of the said plaintiff.

John P. Tweed, being produced and publicly sworn, answers as follows to the interrogatories propounded in these causes:

First. To the first interrogatory he saith: My name is John P. Tweed; my age sixty years, and occupation, merchant.

Second. To the second interrogatory he saith: I did enter into a contract with O. H. Burbridge, supervising special agent of the Treasury Department for the ninth agency, for the purchase of government cotton. The contract is on file among the papers in these
92 cases. That contract was never carried out. The contract contained a provision that it was to be subject to the revocation of the Secretary of the Treasury. After going to Shreveport, I learned that the Secretary of the Treasury had or would revoke the said contract, and this prevented my doing anything under said contract. I would add that I found at Shreveport that other contracts had been made between other parties and the Secretary of the Treasury, which would have made it impossible for me to do anything under my contract, as my contract related only to government cotton concealed from the knowledge of agents appointed by the U. S. government to collect the same; and these other contracts allowed the contracting parties to take even half of all cotton they could show to belong to the so-called "confederate government;" and these parties I found had seized all or nearly all the suspected cotton; and much
93 of this cotton, suspected of belonging to the so-called "confederate government," and which had been seized by parties holding contracts under the U. S. government, had to be released, proof not being found sufficient evidence to condemn the same; so that, had the Secretary not revoked the contract, I could have done nothing under mine; and from what purports to be a certified copy

of said contract, which is hereto annexed and marked exhibit "A," it appears that said contract was entered into under date of January 23, 1866.

Third. To the third interrogatory he saith: The said contract was revoked or annulled by General S. G. Burbridge, local Treasury agent at Shreveport, La., at that time—the said Burbridge acting under orders given by Col. Oscar H. Burbridge, supervising special Treasury agent at New Orleans, the said Burbridge acting by directions of the
94 Secretary of the Treasury. I learned of the revocation of said contract a few days prior to the purchase of the 495 bales of cotton, for a portion of which one of these suits is brought. The bills of sale of the cotton filed in these suits will show when I made the purchases. A few days before I purchased any of this cotton, General S. G. Burbridge, the local Treasury agent at Shreveport, La., informed me at that place that said contract had been or would be revoked.

Fourth. To the fourth interrogatory he saith: I did purchase several lots of cotton, which, in the aggregate, made 495 bales, of which the cotton sequestered in one of these suits is part. In the month of March, 1866, at or near Shreveport, La., all of the purchases of said 495 bales of cotton were made, and after I had learned that my contract had been or would be revoked, as before stated. The bills of sale of said cotton filed in these suits will show the time of purchase.

95 The price I paid was the full marketable value, in gold, at the time and place of purchase for cotton of similar quality, about which there was no dispute as regards title. For price and time of purchase I refer to the invoices filed in these suits. I did confer with an officer of the United States government before making any such purchases, namely, with General S. G. Burbridge, the local Treasury agent at Shreveport, La., I told him of these lots of cotton, making, in all, the 495 bales of cotton spoken of above. I asked him if the U. S. government had any claim to these cottons. He said they had not any that would hold, and that it would be safe for me to purchase them. The result was that I purchased said cotton, as before stated.

Fifth. To the fifth interrogatory he saith: I shipped said 495 bales of cotton, consigned to Oscar H. Burbridge, the supervising special Treasuary agent at New Orleans, with instructions to him to
96 turn over 200 bales of the said cotton to Messrs. C. A. Weed & Co., and the remaining 295 bales thereof to Messrs. Scott, Cage & Co., for my account; and further informed him that, being at Shreveport and having funds, I had invested them in private cotton; and further, that I shipped the said 495 bales of cotton to him in order that the U. S. goverment might know exactly when and what I purchased, and upon what terms; and that I had done nothing under my contract. O. H. Burbridge informed me that in his opinion there was no doubt but that I had acted correctly, and that the cotton belonged to me, and that the U. S. government had no claim to it; but he said that he had been superseded by B. F. Flanders, who had

taken possession of the cotton, and he, Burbridge, had no control over it. I will further say, that said Burbridge did, at various
97 times, and in my presence, use his influence with said Flanders to induce him (Flanders) to release said cotton to me, on the ground that the U. S. government had no just claim to it.

Sixth. To the sixth interrogatory he saith: The said 495 bales of cotton upon its arrival at New Orleans was taken possession of by the defendant, Benjamin F. Flanders. For six weeks or thereabouts he refused to deliver me any portion of it. He then gave me an order for ($\frac{3}{4}$) three-fourths of it; which order for the said ($\frac{3}{4}$) three-fourths I received under a written protest, claiming in said protest to be entitled to the possession of the whole of said cotton. At the time of giving me the said order for the ($\frac{3}{4}$) three-fourths of the cotton as aforementioned, the said Flanders promised me that he would retain in his possession the remaining ($\frac{1}{4}$) one-fourth of said cotton until I could submit the matter to the Secretary of the Treasury. Finding that in violation of his agreement with me he was about to
98 ship the said ($\frac{1}{4}$) one-fourth to New York, I sequestered it. Thereupon he, the said Flanders, through and by the aid of the military authorities, seized and took into his possession the said ($\frac{3}{4}$) three-fourths of said cotton, which he had admitted to be mine, and which had upon the aforementioned order been transferred to me on the books of the warehouses where the same was stored. I then obtained a writ of sequestration for this ($\frac{3}{4}$) three-fourths, and under the orders of the President, the cotton was delivered to the U. S. marshal, in obedience to the writ. Mr. Fanders, the defendant, kept me out of the possession of my entire lot of 495 bales of cotton for nearly two months.

Seventh. To the seventh interrogatory he saith: I did sustain damages by defendant's seizure and detention of said cotton.

The items are as follows:

Decline in value of cotton	$30,000 00
Insurance premiums for time defendant held said cotton	160 00
99 Storage during same period	1,000 00
Counsel fees paid in the two suits for the one-quarter and three-quarters	6,000 00
Clerk's fees and marshal's fees paid in said two suits	1,126 13
Special damage to 50 bales of said cotton which defendant had taken out of warehouse and passed through a pickery	1,000 00
	$39,286 13

Eighth. To the eighth interrogatory he saith: I did on various occasions, in the presence of Mr. J. P. Sullivan and others, offer to said Flanders to give him ample security for the value of the whole of said cotton, for the purpose of selling the same at once, as the market at that time was daily declining, in order to save the loss which would

and did occur by his further holding it, which offers said Flanders peremptorily refused to accede to.

That said loss by reason of the depreciation in value of
100 said cotton did occur, together with the expense incurred by its detention, as stated more fully in answer to the seventh interrogatory.

(Signed) J. P. TWEED.

Examination taken, reduced to writing and by witness subscribed and sworn to this 8th day of February, 1867, before me.

(Signed) NATH'L APPLETON,
Commissioner.

Copy of contract marked Exhibit "A" and annexed to deposition:

Exhibit "A."—Copy.

Whereas it is represented that large quantities of cotton which formerly belonged to the late so-called Confederate States are now in possession of individuals in the Red river country, concealed from the knowledge of agents appointed to collect the same, and that the marks by which such former ownership could have been proved have been destroyed for the purpose of enabling the individuals
101 holding it to convert it to their own use, and whereas it is also represented that most of this cotton is held at places and in districts remote from military posts, so that if it could be found and identified it could not be brought forward by the agents, except by incurring the expense of obtaining military force to aid in its removal; and that the parties holding it dare not bring it within the reach of civil or military authorities for fear that its true character may be discovered, thereby causing its seizure.

And whereas it is also represented that a large portion of this cotton can be purchased from the holders at much less than its real value, if the purchaser will take the title at his own risk of seizure by government authorities:

Now therefore it is hereby agreed by and between John P. Tweed, of Cincinnatti, Ohio, and Oscar H. Burbridge, supervising special agent, appointed by the Secretary of the Treasury to collect captured cotton in the third agency, as follows, viz:

102 Said Tweed hereby agrees to furnish all money necessary to purchase the cotton aforesaid; together with all the assistants necessary for the purpose, and all requisite means of transportation, and to use all proper efforts to purchase as much of said cotton, situated upon and near the Red river and its tributaries, as can be purchased, prepared for shipment and transported to and delivered at New Orleana, at a cost of not exceeding three-fourths its market value there; and to deliver the same to said Burbridge, in New Orleans, in good shipping order, with receipted bills of sale thereof from the holders, free and discharged of all cost of purchase,

taken possession of the cotton, and he, Burbridge, had no control over it. I will further say, that said Burbridge did, at various
97 times, and in my presence, use his influence with said Flanders to induce him (Flanders) to release said cotton to me, on the ground that the U. S. government had no just claim to it.

Sixth. To the sixth interrogatory he saith: The said 495 bales of cotton upon its arrival at New Orleans was taken possession of by the defendant, Benjamin F. Flanders. For six weeks or thereabouts he refused to deliver me any portion of it. He then gave me an order for ($\frac{3}{4}$) three-fourths of it; which order for the said ($\frac{3}{4}$) three-fourths I received under a written protest, claiming in said protest to be entitled to the possession of the whole of said cotton. At the time of giving me the said order for the ($\frac{3}{4}$) three-fourths of the cotton as aforementioned, the said Flanders promised me that he would retain in his possession the remaining ($\frac{1}{4}$) one-fourth of said cotton until I could submit the matter to the Secretary of the Treasury. Finding that in violation of his agreement with me he was about to
98 ship the said ($\frac{1}{4}$) one-fourth to New York, I sequestered it. Thereupon he, the said Flanders, through and by the aid of the military authorities, seized and took into his possession the said ($\frac{3}{4}$) three-fourths of said cotton, which he had admitted to be mine, and which had upon the aforementioned order been transferred to me on the books of the warehouses where the same was stored. I then obtained a writ of sequestration for this ($\frac{3}{4}$) three-fourths, and under the orders of the President, the cotton was delivered to the U. S. marshal, in obedience to the writ. Mr. Fanders, the defendant, kept me out of the possession of my entire lot of 495 bales of cotton for nearly two months.

Seventh. To the seventh interrogatory he saith: I did sustain damages by defendant's seizure and detention of said cotton.

The items are as follows:

Decline in value of cotton	$30,000 00
Insurance premiums for time defendant held said cotton	160 00
99 Storage during same period	1,000 00
Counsel fees paid in the two suits for the one-quarter and three-quarters	6,000 00
Clerk's fees and marshal's fees paid in said two suits	1,126 13
Special damage to 50 bales of said cotton which defendant had taken out of warehouse and passed through a pickery	1,000 00
	$39,286 13

Eighth. To the eighth interrogatory he saith: I did on various occasions, in the presence of Mr. J. P. Sullivan and others, offer to said Flanders to give him ample security for the value of the whole of said cotton, for the purpose of selling the same at once, as the market at that time was daily declining, in order to save the loss which would

and did occur by his further holding it, which offers said Flanders peremptorily refused to accede to.

That said loss by reason of the depreciation in value of
100 said cotton did occur, together with the expense incurred by its detention, as stated more fully in answer to the seventh interrogatory.

(Signed) J. P. TWEED.

Examination taken, reduced to writing and by witness subscribed and sworn to this 8th day of February, 1867, before me.

(Signed) NATH'L APPLETON,
Commissioner.

Copy of contract marked Exhibit "A" and annexed to deposition:

Exhibit "A."—Copy.

Whereas it is represented that large quantities of cotton which formerly belonged to the late so-called Confederate States are now in possession of individuals in the Red river country, concealed from the knowledge of agents appointed to collect the same, and that the marks by which such former ownership could have been proved have been destroyed for the purpose of enabling the individuals
101 holding it to convert it to their own use, and whereas it is also represented that most of this cotton is held at places and in districts remote from military posts, so that if it could be found and identified it could not be brought forward by the agents, except by incurring the expense of obtaining military force to aid in its removal; and that the parties holding it dare not bring it within the reach of civil or military authorities for fear that its true character may be discovered, thereby causing its seizure.

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98 ship the said ($\frac{1}{4}$) one-fourth to New York, I sequestered it. Thereupon he, the said Flanders, through and by the aid of the military authorities, seized and took into his possession the said ($\frac{3}{4}$) three-fourths of said cotton, which he had admitted to be mine, and which had upon the aforementioned order been transferred to me on the books of the warehouses where the same was stored. I then obtained a writ of sequestration for this ($\frac{3}{4}$) three-fourths, and under the orders of the President, the cotton was delivered to the U. S. marshal, in obedience to the writ. Mr. Fanders, the defendant, kept me out of the possession of my entire lot of 495 bales of cotton for nearly two months.

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and did occur by his further holding it, which offers said Flanders peremptorily refused to accede to.

That said loss by reason of the depreciation in value of
100 said cotton did occur, together with the expense incurred by its detention, as stated more fully in answer to the seventh interrogatory.

(Signed) J. P. TWEED.

Examination taken, reduced to writing and by witness subscribed and sworn to this 8th day of February, 1867, before me.

(Signed) NATH'L APPLETON,
Commissioner.

Copy of contract marked Exhibit "A" and annexed to foregoing deposition:

Exhibit "A."—Copy.

Whereas it is represented that large quantities of cotton which formerly belonged to the late so-called Confederate States are now in possession of individuals in the Red river country, concealed from the knowledge of agents appointed to collect the same, and that the marks by which such former ownership could have been proved have been destroyed for the purpose of enabling the individuals
101 holding it to convert it to their own use, and whereas it is also represented that most of this cotton is held at places and in districts remote from military posts, so that if it could be found and identified it could not be brought forward by the agents, except by incurring the expense of obtaining military force to aid in its removal; and that the parties holding it dare not bring it within the reach of civil or military authorities for fear that its true character may be discovered, thereby causing its seizure.

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expense of preparation for shipment or of transportation or otherwise connected therewith.

Said Burbridge hereby agrees that upon the delivery to him as aforesaid of each bale of cotton so purchased with receipted bills of sale thereof from the holders, and free and discharged of all
103 cost and expense of purchase, preparation for shipment, transportation or otherwise relating thereto, he will pay and deliver to said Tweed three-fourths of the same, of average quality, as compensation in full for his services, and for all cost of purchase, expense of preparing the same for shipment or for transportation or otherwise incurred by him in relation thereto. Such payment and delivery to be considered as a sale by the United States, so that the cotton so paid and delivered to said Tweed shall not be subject to the payment of internal revenue by him or by his assigns; or in case it shall be so held, then said internal revenue shall be paid by said Burbridge.

It is further mutually agreed that this contract shall be by said Burbridge promptly submitted to the Secretary of the Treasury for his approval; and that if it shall not be approved by him, said Burbridge shall immediately notify said Tweed thereof, and the
104 contract shall thereupon be terminated. But any cotton which shall have been purchased by said Tweed before the receipt of such notice shall be faithfully forwarded by him to said Burbridge and delivered under this contract, subject, however, to the payment by him of the three-fourths thereof, in manner aforesaid.

It is also mutually agreed that this contract shall at all times be subject to revocation by the Secretary of the Treasury, or by his direction, such revocation to be made subject to the completion of any transactions previously commenced under it, in accordance with the provisions herein contained.

In witness whereof we have hereunto set our hands this 23d day of January, 1866.

(Original signed) J. P. TWEED,
" " O. H. BURBRIDGE,
Sup. Spec. Ag't 3d Agency T. D.

Circuit Court of the United States, sixth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

105 I certify the foregoing to be a true copy of a certain original document this day exhibited to me.

Witness my hand and seal of said court at New Orleans, this 26th day of July, A. D. 1866.

[SEAL COURT.] (Signed) F. B. VINOT, *D'y Cl'k.*

Witness:
(Signed) J. P. TWEED.

[5-c. int. rev. stamp affixed and cancelled.]

At the execution of a commission for the examination of witnesses betwen John P. Tweed, plaintiff, and Benjamin F. Flanders, defendant, this paper writing was produced and shown to John P. Tweed, witness, and by him deposed unto at the time of the examination before me.

(Signed) NATH'L APPLETON,
Commissioner.

Deposition of Benj. H. Epperson, a witness, taken by consent, before me, Nath'l Appleton, a commissioner named in the annexed commission, on the 8th day of February, one thousand eight
106 hundred and sixty-seven, at the city of New York, in the county and State of New York, in certain causes now depending in the Circuit Court of the United States for the fifth judicial circuit in and for the district of Louisiana, between John P. Tweed, plaintiff, and Benjamin F. Flanders, defendant, on the part of the said plaintiff.

STATE OF NEW YORK, *City and County of New York, ss:*

Benj. H. Epperson, being produced and publicly sworn, doth depose and say: I reside at Clarksville, Red River county, Texas, attorney-at-law by professon, and 42 years of age. I am acquainted with the plaintiff in these suits. First became acquainted with the plaintiff in the spring of 1866, at Shreveport, La. I was then at Shreveport acting in the capacity of attorney for various owners of cotton then stored at Shreveport. This cotton was the property of private individuals, who were residing in the State of Texas.
107 In the month of March, 1866, or thereabouts, I sold to Mr. John P. Tweed, the plaintiff in these suits, about 417 bales of said cotton, through the plaintiff's agent, for that purpose, Charles E. Goodwin. One lot of this cotton was according to my recollection 405 bales, belonging to Wm. B. Aiken, who resides near me in Red River county, Texas, and who is and has been for many years well known to me. This lot of cotton was stored at Jefferson, Texas, a part with Mr. Terry, and the remainder with Wright Harrison & Co., commission merchants. Charles T. Turnbull was a Treasury agent of the United States to collect abandoned or confiscated property, and especially cotton which had been the property of the Confederate States, and was stationed at Jefferson, Texas. He or some one of his predecessors had issued an order that all parties who had cotton stored at Jefferson should by a certain time file in his
108 office the affidavit of the produce of the cotton, showing the same to have been raised by him, and never disposed of to the Confederate States, or to any of its agents, nor to any State in rebellion against the government of the United States. Mr. Aiken lived about one hundred miles from Jefferson, where his cotton was stored, and not knowing of this requirement, and of course failed to file such an affidavit. For this failure Turnbull seized this cotton by force and shipped it to Shreveport and had it stored. As soon as Mr. Aiken was notified that his cotton had been seized, he engaged

me to accompany him to Shreveport, and to assist in getting possession of the cotton. In Jefferson I called upon Mr. Turnbull, and asked him upon what grounds he had seized Mr. Aiken's cotton. He said that it was because he, the said Aiken, had failed to file the affi-
davit as above stated; and said that Aiken's merchants were
109 to blame, because they had not notified Mr. Aikens of this order. I asked him to give me a letter to Gen'l Burbridge, who was the local Treasury agent at Shreveport, and who then had possession of the cotton, stating these facts to him. This he declined to do, alleging that he was unable to write, then being very sick: but stated that a letter from Mr. Homer B. Hawkins, who was acting either as clerk or assistant of the said Turnbull, and was in the office where all the business was transacted, would answer my purpose. Mr. Turnbull was in his room at the hotel and was very ill, not expected to recover. Mr. Hawkins gave me a letter to General Burbridge stating in it that there was no evidence against the Aiken cotton showing it to be government property, but that the cotton had been seized because of the failure to comply with the order
above alluded to. Notwithstanding this letter, Gen'l Bur-
110 bridge declined to release the cotton, upon the ground that the letter ought to have come from Turnbull himself. After trying for several days to get the cotton released and failing, and concluding that the cotton was held simply to levy blackmail upon the owner, fifteen bales had been lost in removing it from Jefferson to Shreveport; and unable to fix the responsibility of loss upon any person and Mr. Tweed having offered me what I believed to be a fair price for the cotton and to take the chances to recover the fifteen bales lost, and to pay all charges, including attorney's fees, I advised a sale to him, which was made.

Mr. Tweed bought the cotton with the understanding that the title to it was good and that the United States had no just claim to it, and that it had been seized under the circumstances above stated, and was held in my opinion merely for the purpose of exacting black-
mail. A part of the price of the sale which was considered
111 by me in making or advising the sale was the heavy charges which had been incurred by the seizing and shipping the cotton from Jefferson to Shreveport, the loss of fifteen bales, and the damage done to the cotton from the manner it had been handled. The cotton was sold according to the warehouse receipts for it at Jefferson, and not by actual weight. In a few days after the sale of the Aiken cotton, I also sold to the said Tweed, through his agent, Mr. Goodwin, twelve other bales of cotton, which belonged to a Mr. John L. Carroll, who also lives in Red River county, Texas, and which was seized under similar circumstances at Jefferson and shipped to Shreveport. I live near Mr. Carroll and Mr. Aiken, and know them both well, and know that they raised the cotton above alluded to, in Red River county, Texas; and I further know that the said cotton
was never in the possession of any agent of the Confederate
112 States, and was never claimed by any such. Had it ever been sold to the confederates, or any of its agents, I would, from my

intimacy with the parties, their agent and attorney, known something of it. I also know Mr. Tweed, through his agent, Mr. Goodwin, bought two other lots of cotton about the same time, one of which was from Mrs. Mary L. Boyce, who resides in the same town I do, and with whom I am well acquainted. This lot was forty bales, I think. Mrs. Boyce was at Shreveport, and I advised her to sell at the price offered. I was not her agent or attorney, but as a friend advised the sale. Her cotton had been seized in Bowie county, Texas, and hauled upon wagons to Jefferson. Mr. Tweed paid Mrs. Boyce, including the expenses which had accrued on the cotton, the full marketable value in gold. I also know of Mr. Tweed's buying 32 bales from a Mrs. Boyd, of Bowie county, Texas. I have
113 no personal knowledge of the details of this trade. I knew that the lot of cotton bought of Mrs. Boyce was raised by her, and had never been out of her possession, until it was seized by the order of C. T. Turnbull; and that it had never been claimed by the Confederate States or any of its agents. Mr. Turnbull seized almost all the cotton in that vicinity about this time, and no person who had any considerable quantity escaped seizure under some pretext. It was well understood that this was done to extort money from the owners, and scarcely a single person could get his cotton released without paying something for it. Whenever he ascertained that any one had any considerable quantity of cotton, he seized it and moved it, by a military force, managing to lose a considerable portion in the transportation.

As above stated, I reside in Texas, but am in this city upon business. I do not know anything further to the advantage of either
114 party, that I can now call to mind.

(Signed) BENJ. H. EPPERSON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to before me this 8th day of February, 1867, before me.

(Signed) NATH'L APPLETON,
Commissioner.

Charles E. Goodwin, (called in the commission Charles A. Goodwin,) being produced and publicly sworn, answers as follows to the interrogatories propounded in these cases:

First. To the first interrogatory he saith: My name is Charles E. Goodwin; my age, 26 years; my residence, New York city; my occupation, trader.

Second. To the second interrogatory he saith: I know the plaintiff in these suits. Have been acquainted with him for about two years. I also know the defendant in these suits, and have been acquainted with him for about three years.

115 Third. To the third interrogatory he saith: I do know o the plaintiff purchasing four hundred and ninety-five bales o cotton in or about the month of March, 1866, and a portion of whic

is sequestered in one of these suits. I was instrumental in the purchase of the said cotton, with the exception of about four bales. I was acting at that time as agent of Mr. Tweed for that purpose. For four hundred and five bales of said cotton, purchased at Shreveport, belonged to Mr. W. B. Aiken, of Red river county, Texas, and was contracted for through Mr. B. H. Epperson, the attorney of Mr. Aiken, the plaintiff paid eighty dollars per bale in gold. For twelve other bales of said cotton, also purchased at Shreveport, and contracted for through the said Epperson, and belonging to Mr. John L. Carroll, also of Red River county, Texas, the plaintiff paid sixty dollars per bale in gold. There being heavy charges upon said cotton,
116 which we assumed to pay, and did pay, together with charges and expenses on account of the seizing and shipping of the cotton from Jefferson to Shreveport, and also paying storage on said cotton, and attorney's fees; and taking also into account the damage to said cotton, from the manner in which it had been handled, and that some fifteen bales contracted for had been lost or stolen after it had been taken from the warehouses at Jefferson, made, with the prices paid per bale, that full market value at that time and place. Also bought at Shreveport, of N. C. Gould, attorney for Mrs. Mary L. Boyce, forty bales of said cotton, for which the plaintiff paid eighty-five dollars per bale in gold, together with the expenses of transportation by waggon from Clarksville, Texas, to Jefferson, thence per steamboat to Shreveport, and also warehouse expenses, amounting in the aggregate to its full marketable value at that time
117 and place. I also purchased at Jefferson, Texas, of S. G. Mosely, attorney for Mrs. W. A. Boyd, 32 bales of cotton, for which plaintiff paid sixty dollars per bale in gold, together with the transportation from Clarksville, Texas, to Jefferson, thence by steamboat to Shreveport; also storage commissions and repairs upon said bales, making, as in the other cases, full market value for said cotton, at the time and place of purchase. I also purchased at Jefferson, Texas, of A. T. Hanson, acting for a Mr. Whitfield, 23 bales of cotton, for which was paid sixty dollars per bale, and also the expenses of transportation to Shreveport, storage and commissions upon said cotton, making in all the full market value at that time and place. The 495 bales of cotton referred to in the third interrogatory were all that was received from the aforesaid purchasers.

Fourth. To the fourth interrogatory he saith: I know nothing of the history of aforementioned cotton, with the exception of
118 what was told me by local Treasury agents at Jefferson, Texas, and Shreveport, La. Mr. C. T. Turnbull, acting as local Treasury at Jefferson, Texas, informed me in relation to all the lots of cotton hereinbefore referred to; that he had no proofs against the said cotton, by which the government could hold it, and that it would be safe for me to purchase, and that for a consideration per bale he would release the cotton from seizure. Before purchasing the Aiken and Boyce cotton at Shreveport, I called on General Burbridge. I enquired of him if I could by these lots of cotton with safety, without trouble from the government. He replied that I could purchase with

safety, as the government had no claims by which it could be held, and he would have to release the same, there being no proofs against it.

Fifth. To the fifth interrogatory he saith: Mr. Tweed, the plaintiff, had entered into a contract with O. H. Burbridge, under date
119 of January 23d, 1866, for the purpose of purchasing cotton which was concealed from the knowledge of the agents of the United States who had been appointed to collect the same. By this contract, one-fourth of all cotton purchased under it were to be secured to the United States. I went to Shreveport, La., about the 1st of March, 1866, as an agent for Mr. Tweed, for the purpose of purchasing cottons under the contract. I also visited Jefferson, Texas, for like purpose. Before I had any opportunity of purchasing any cotton under that contract, I was informed by General S. G. Burbridge that the contract before mentioned had been, or would be, revoked by the Secretary of the Treasury. I also was informed by Mr. Tweed of the same fact before making any purchases of cotton. In consequence of this information from General Burbridge and Mr. Tweed, I did not attempt to purchase any cotton of the character referred to in the contract. All the cotton which I have before
120 mentioned as having been purchased at Jefferson and Shreveport, and of which the 495 bales referred to heretofore was all that was received therefrom, were bought without any reference to said contract. I will also add that it would have been impracticable to have done anything under the above-mentioned contract, as I found at Shreveport other parties who had contracts with the Secretary of the Treasury, allowing them one-half of all cotton they could show to have belonged to the so-called confederate government. These parties had already seized all, or nearly all, the cotton suspected of belonging to the confederate government. I will further state that under these last-mentioned contracts, the remaining one-half of the cotton therein referred to went to the United States government. Therefore, under these circumstances, it was impossible to act under Mr. Tweed's contract, as it left no intermediate ground to be covered by his contract. It was, therefore, abandoned.

121 (Signed) CHAS. E. GOODWIN.

Examination taken, reduced to writing and by the witness subscribed and sworn to this 8th day of February, 1867, before me.

(Signed.) NATH'L APPLETON,
Commissioner.

I, Nath'l Appleton, commissioner, do hereby certify that John P. Tweed, Charles E. Goodwin and Benjamin H. Epperson, the deponents, were by me severally sworn to declare the truth on the questions put to them in these causes, that the interrogatories were produced to the said Tweed and Goodwin, and their answers thereto, together with the deposition of the said Epperson, taken in writing and subscribed by them respectively, in my presence, on the day and at the place in that behalf first aforesaid.

In testimony whereof I have hereunto set my hand and seal at the city of New York, on the 8th day of February, one thousand eight hundred and sixty-seven.

122 [SEAL.] (Signed) NATH'L APPLETON,
Commissioner.

I certify that my fees as commissioner in these suits are seventy-five dollars.

(Signed) NATH'L APPLETON,
Commissioner.

United States Circuit Court, district of Louisiana.

Agreement of counsel as to commissions.—Filed February 23d, 1867.

Stipulation.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3857.

SAME
vs.
SAME. } No. 3899.

A commission may issue to Jefferson to examine Wright, to Clarksville, Texas; to examine J. L. Carroll, E. P. Epperson, Mrs. Eliza Boyd, J. R. Moss, and Samuel F. Molts and William B.
123 Aiken upon interrogatories crossed by the plaintiff. The testimony may be used in each of the above-entitled cases. The affidavit, &c., to obtain commission is waived, as well as all matters of mere form, and reserving all objections to competency or relevancy of evidence, and all legal objections.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Of Counsel for Plaintiff.

(Signed) WHITTAKER & STEWART,
Of Counsel for Defendant.

Circuit Court of the United States for the fifth judicial circuit holding sessions in and for the district of Louisiana.

Commission for defendant, issued February 25th, 1867, returned and filed April 23d, 1867, in cases Nos. 3857 and 3899.

To James G. Blanchard or William Ellet, at Clarksville, Texas:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that
124 you call and cause to come before you J. L. Carroll and others, witnesses, and them duly examine on the annexed interrogatories on oath, touching and concerning certain matters and

things in two cases now depending in the said court, wherein John P. Tweed is plaintiff and Benjamin F. Flanders is defendant, and the same examinations so taken and reduced to writing you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said causes, and send also this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 25th day of February, anno Domini, 1867, and the 91st year of the independence of the United States of America.

125 [SEAL.] (Signed) CHAS. CLAIBORNE. *Clerk*,
By F. B. VINOT, *D'y Clerk*.

United States Circuit Court, district of Louisiana.

Interrogatories-in-chief.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3899.

SAME
vs.
SAME. } No. 3857.

Interrogatories to be administered to J. L. Carroll, of Clarksville, Texas, witness to be examined on the part of B. Flanders, defendant in the above-entitled cause.

First. Please state your name, residence, and business or profession.

Second. Do you know either and which of the parties named in the caption of this suit? If you know the plaintiff, state when and where you first knew him.

Third. Did you or either of you, at Jefferson, Texas, on or
126 about the 8th of March last, own or control 12 bales of cotton marked A L, which were purchased by one Charles E. Goodwin? By whom was the sale made? What price was paid by Goodwin?

Fourth. Was the said cotton or any, and if any, what portion of the same, under seizure by the agents of the Treasury Department, before and at the time of the sale to Goodwin? Under what plea or pretence was the same seized and held; and by whom was the same seized and held? If you shall state that it was so seized and held on a charge that it was confederate cotton and therefore the property of the United States, please state if you know whether said Goodwin (or the plaintiff if he was there) knew that it was so under seizure under the charge aforesaid.

Fifth. Do you know whether the plaintiff or said Goodwin claimed or represented that they or either of them purchased the same under
authority of any contract or authority with the Treasury De-
127 partment of the United States to any confederate cottons under

seizure or otherwise? State fully what representations were made to you by either Goodwin or the plaintiff on the subject?

Sixth. What was the market value at Jefferson aforesaid, at the date of the sale of this cotton, if it had been free of any charge of seizure? Was the price at which you sold influenced in any degree by the embarrasments resulting from the seizure and charge, and how was it influenced; to what extent also?

Seventh. Can you state any other matter or fact within your knowledge which may be of benefit or advantage to the defendant in this suit? If so, please state the same as fully as if you were here specially interrogated thereunto.

Eighth. The said B. H. Epperson is especially further interrogated as to whether at Shreveport, in Louisiana, on or about the first of March, 1866, as the attorney or agent of one W. B. Aiken, he knew of the sale to the said plaintiff or to said Goodwin of a certain
128 lot of 386 bales of cotton or thereabouts or any other amount claimed as the propety of said W. B. Aiken; if so, what price was paid for said cotton per bale.

Ninth. What portion of said cotton was then and before then under seizure by the agents of the Treasury Department of the United States? Where was it deposited? Under what representations was the cotton bought and sold? What authority, if any, did the plaintiff or said Goodwin claim to be possessed of to buy cottons under seizure by the Treasury Department, or to buy confederate cotton? What influence, if any, had the seizure aforesaid upon the price received for said cotton? What was the value at Shreveport aforesaid of said cotton per bale, if it had been free of seizure by the Treasury agents? Was it represented by said Goodwin or the plaintiff that he had any peculiar advantages over other citizens in purchasing had cotton whilst it was under seizure.

129 (Signed) WHITAKER & STUART,
Of Counsel for Def't.

United States Circuit Court, district of Louisiana.

Cross-interrogatories.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. —.

Cross-interrogatories to be administered to J. L. Carroll and E. P. Epperson, of , witnesses to be examined on the part of plaintiff in the above-entitled cause.

First cross-interrogatory. If you say you sold cotton to plaintiff, or to Charles E. Goodwin for him, was not said sale made in the month of March, 1866, and subsequent to the day of said month?

Second cross-interrogatory. Do you know the history of said cotton, and did the same or any portion thereof ever belong to the so-called confederate government? Was not the only ground upon

which said cotton could be justly held by the Treasury offi-
130 cers that it was, along with all the cotton in that region, captured property?

Third cross-interrogatory. If you say that plaintiff, or his said agent, spoke of said contract, did he not in substance represent that he had a contract with the government for the purchase of cotton which had belonged to the confederate government?

Fourth cross-interrogatory. State any other matter or thing which will make for the benefit of the plaintiff, as fully as if you had been particularly interrogated in relation thereto.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Of Counsel of Plaintiff.

United States Circuit Court, district of Louisiana.

Interrogatories-in-chief.

J. P. TWEED
vs.
B. F. FLANDERS.

Interrogatories to be administered to Mrs. Eliza Boyd, (executrix of the last will and testament of William H. Boyd, deceased,)
131 of Bowie county, Texas, and to J. R. Moss and Samuel F. Moults, of , witnesses to be examined on the part of B. F. Flanders, defendant in the above-entitled cause.

First. Please state your name, residence, and business or profession.

Second. Do you know either and which of the parties named in the caption of this suit? If you know the plaintiff, state when and where you first knew him.

Third. Did you, or either of you, at Jefferson, Texas, on or about the 5th of March, 1866, own or control (and in what capacity) certain thirty-two bales of cotton, marked W. H. B., which were purchased by one Charles E. Goodwin; by whom was the negotiation and sale conducted and made, and in what capacity did you make said sale; what price was paid by said Goodwin or the plaintiff?

Fourth. How many bales of cotton did you sell at that time to said Goodwin or Tweed, (if any;) where were the same stored or deposited at the time; what portion of the same, if any,
132 were under seizure by any agent or agents of the Treasury Department of the United States before and at the date of said sale? Under what plea or pretense were the same seized or held and by whom? name the agent or agents. If you shall state that it was so seized and held under a charge that it was confederate cotton, and therefore the property of the United States, please state if you know whether said Goodwin (or the plaintiff, if he was there) knew that it was so under seizure under the charge aforesaid.

Fifth. Do you know whether the plaintiff or said Goodwin claimed

or represented that they, or either of them, purchased said cotton under authority of any contract with the Treasury Department of the United States to buy confederate cotton under seizure or otherwise? or state fully what representations were made to you by either Goodwin or the plaintiff on the subject of their authority to purchase confederate cottons, or such as were claimed to be.

133 Sixth. What was the market value at Jefferson, aforesaid, at the date of the sale of this cotton, if it had been free of any charge or seizure, as aforesaid? Was the price at which you sold influenced in any degree by the embarrasment resulting from said charge and seizure, and how was it influenced? Also state to what extent.

Seventh. Have you a duplicate of the receipt given by Mrs. Boyd signed by J. R. Moss as her agent, and by Samuel F. Moults as he attorney, for the cash payment made by said Goodwin of $1,920 in specie, dated the 5th of March, 1966, at Jefferson? If so, pleas annex it or a copy, duly marked or authenticated, and let the commissioner annex it to your answer.

Eighth. Can you state any other matter or fact within you knowledge which may be of benefit or advantage to the defendant in this suit? If so, please state the same as fully as if you were here specially interrogated thereunto.

(Signed) WHITTAKER & STUART,

134 *Of Counsel for Def't.*

United States Circuit Court, district of Louisiana.

Cross-interrogatories.

J. P. TWEED
vs.
B. F. FLANDERS.

Cross-interrogatories to be propounded to Mrs. Eliza Boyd, (executrix of the last will and testament of Wm. H. Boyd, deceased,) of Bowie county, Texas; and to J. B. Moss and Samuel F. Moults, of , witnesses to be examined on part the plaintiff in the above-entitled cause.

1st cross-interrogatory. If you say you sold cotton to plaintiff, or to Charles E. Goodwin for him, was not said sale made in the month of March, 1866, and subsequent to the day of said month?

2 cross-interrogatory. Do you know the history of said cotton, and did the same or any portion thereof ever belong to the so-

135 called confederate government? Was not the only ground upon which said cotton could justly be held by the Treasury officers that it was, along with all the cotton in that region, captured property?

3d cross-interrogatory. If you say that plaintiff or his said agent spoke of said contract, did he not in substance represent that he had

a contract with the government for the purchase of cotton which belonged to the confederate government?

4th cross-interrogatory. State any other matter or thing which will make for the benefit of the plaintiff as fully as if you had been particularly interrogated with reference thereto.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Attorneys for Plaintiff.

United States Circuit Court, district of Louisiana.

Interrogatories-in-chief.

J. P. TWEED
vs.
B. F. FLANDERS.

136 Interrogatories to be administered to W. B. Aiken, of , a witness to be examined on the part of B. F. Flanders, defendant in the above-entitled cause.

First. Please state your name, residence, and profession or business.

Second. Do you know either and which of the parties to this suit, named above in the caption? When and where did you first know them?

Third. Did you, by yourself or agent, sell 386 bales of cotton to the plaintiff, or to Charles E. Goodwin, at Shreveport, La., on or about the first of March last? What price was paid for the same?

Fourth. Was said cotton, or any and what portion of the same, under seizure by the agents of the Treasury Department before and at the time of said sale? Under what plea or pretense was the same seized and held, and by whom (name him) was it detained? If you shall state that it was seized and held under a charge that it had been confederate cotton, and therefore was the property of the United States, please state whether the said Goodwin or the
137 plaintiff (if he was there) knew that it was so under seizure, under the charge aforesaid.

Fifth. Do you know whether the plaintiff or said Goodwin claimed that they, or either of them, purchased the said cottons under authority of a contract with the Treasury Department to buy confederate cottons under seizure or otherwise?

Sixth. State fully what representations, if any, were made to you by the plaintiff, or by said Goodwin, on the subject of any contract or authority they had with or from the government.

Seventh. Had this cotton been free of seizure by the government officials, what was the market price or value of the same per pound or per bale at Shreveport at the date of said sale?

Eighth. In what manner and to what extent was the market value or price of said cotton influenced by the fact of its being under

seizure at the time of the sale? Was the price or value en-
138 hanced or diminished by the fact; and was it released to you, or to Mr. Tweed or Goodwin? Do you know of your own knowledge?

(Signed) WHITAKER & STUART,
Of Counsel for Def't.

United States Circuit Court, district of Louisiana.

Cross-interrogatories.

J. P. TWEED
vs.
B. F. FLANDERS.

Cross-interrogatories to be propounded to Wm. B. Aiken, of , a witness to be examined on the part of plaintiff in the above-entitled suit.

1st cross-interrogatory. If you say you sold cotton to plaintiff, or to Charles E. Goodwin for him, was not said sale made in the month of March, 1866, and subsequent to the day of said month?

2d cross-interrogatory. Do you know the history of said cotton, and did the same or any portion thereof belong to the so-
139 called confederate government? Was not the only ground upon which said cotton could be justly held by the Treasury officers that it was, along with all the cotton in that region, captured property?

3d cross-interrogatory. If you say that plaintiff or his said agent spoke of said contract, did he not, in substance, represent that he had a contract with the government for the purchase of cotton which had belonged to the confederate government?

4th cross-interrogatory. State any other matter or thing which will make for the benefit of the plaintiff as fully as if you had been particularly interrogated with reference thereto.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Of Counsel for Plaintiff.

Testimony taken under commission.

STATE OF TEXAS, *Red River County*:

I, John O. Sims, a notary public in and for the county of
140 Red River, by virtue of a commission to me directed from the United States Circuit Court, district of Louisiana, in a suit now in said court pending, wherein J. P. Tweed is plaintiff and B. F. Flanders defendant, have caused J. L. Carroll, the witness in said commission named, to appear before me, and after being duly sworn true answer to make to the interrogatories accompanying said commission, the said witness answering thereto says:

To the first direct interrogatory. My name John L. Carroll; I reside in Red River county, Texas; my business is that of a farmer.

To the second interrogatory. I know neither of the parties to this suit.

Third interrogatory. I owned twelve bales of cotton. I am not positive as to the mark, but think it was W. C. B. H. Epperson was my agent, and sold the cotton for me to whom I do not know.

141 I received from my agent sixty dollars per bale in specie for the cotton.

Answer so fourth interrogatory. I know neither of the seizure and charges against the cotton, except through my agent. I know it was not confederate cotton.

Answer to fifth interrogatory. I don't know of my own knowledge about the authority of the parties to buy cotton.

Answer to sixth interrogatory. The market value of cotton at Jefferson was twenty-three cents in specie per pound.

Answer to seventh interrogatory. I know that the cotton was raised by me, and there were no just grounds upon which it could be seized or detained. I know nothing more that will benefit the plaintiff.

(Signed) JOHN L. CARROLL.

To the first cross-interrogatory. I did not sell any cotton to plaintiff or Charles E. Goodwin. I do not know to whom my agent sold.

Answer to second cross-interrogatory. I know that said

142 cotton was raised on my place, in Red River county, Texas; shipped by my waggon to Jefferson; after which time I have no personal kuowledge as to its history. So far as I know they had no just claim on the cotton. I don't know whether it was along with captured cotton or not.

Answer to 4th interrogatory. I know nothing more that will benefit the plaintiff.

(Signed) JOHN L. CARROLL.

STATE OF TEXAS, *Red River County*:

I, John O. Sims, notary public in and for said county of Red River, do hereby certify that the facts, by me stated as aforesaid, are true, and that the foregoing answers were by the said witness, John L. Carroll, sworn to and subscribed before me.

143 Given under my hand, officially, and seal of office, at office, in said county, this 1st day of April, A. D. 1867.

[SEAL.] (Signed) JOHN O. SIMS,
Notary Public, Red River County.

STATE OF TEXAS, *Red River County*:

I, John O. Sims, notary public in and for the county of Red River, by virtue of a commission to me directed from the United States Circuit Court, district of Louisiana, in a suit now in said court pending, wherein J. P. Tweed is plaintiff and B. F. Flanders defendant, have caused W. B. Aiken, the witness in said commission named, to appear before me; and after being duly sworn true answer to make to the interrogatories accompanying said commission, the said witness, answering thereto, says:

1st direct interrogatory. My name is W. B. Aikin; I am a farmer and reside in Red River county, Texas.

2d direct interrogatory. I was introduced to a gentleman
144 by the name of Tweed, at Shreveport, Louisiana, about 1st March. 1866. I do not know the defendant, B. F. Flanders.

3d direct interrogatory. I did by myself and agent sell to Charles E. Goodwin, agent for Tweed, 386 bales of cotton at Shreveport; also fifteen bales which had been misplaced after seizure by the Treasury agent at Jefferson, Texas. I received eighty dollars per bale in gold coin. The parties Tweed and Goodwin were to pay my lawyer's fee, and to take up a bond which I had given to the Treasury agent at Jefferson for the payment of the internal revenue duty; the amount was three thousand eight hundred and thirty-two dollars in currency. This bond they failed to pay.

4th interrogatory. It was under seizure at the time of sale. The plea and pretences for seizure was that I had not filed my certificate as the producer of the cotton with the warehousemen at Jef-
145 ferson, Texas. It was seized, held, and detained by General Burbridge; it was not confederate cotton, and if there was any charge to that effect, it never came to my knowledge.

To the fifth direct interrogatory. I understood from the plaintiff and Goodwin that they had authority to buy cotton under seizure.

To the sixth direct interrogatory. I understood from both Tweed and Goodwin that Tweed had authority from the government to buy cotton under seizure.

To the seventh direct interrogatory. If it had not been under seizure at the time of sale, it was worth from one hundred and ten to one hundred and twenty dollars per bale, at that time and place.

To the eighth direct interrogatory. There was a loss of at least one-fourth of its value at the time of sale; the price was diminished, as before stated, at least one-fourth. It was not released to me, and I do not know anything more of it.

(Signed) W. B. AIKIN.

146 To the first cross-interrogatory. The cotton was sold about the first of March, 1866.

To the 2d cross-interrogatory. I do know the history of said cotton; it was produced by me, except five bales, which I bought of my neighbor before it was seized; it did not belong to the confederate government. I did not consider that Treasury agent had any right to interfere with my cotton, it being my private property; nor was it along with captured cotton, nor did I consider my cotton captured property.

To third cross-interrogatory. The plaintiff and his agent bothe represented to me that the plaintiff had a contract with the Treasury Department to buy confederate cotton, or any cotton under seizure.

To the fourth cross-interrogatory. I know nothing more that wil benefit the plaintiff in the above-entitled cause.

(Signed) W. B. AIKIN.

147 STATE OF TEXAS, *Red River County:*

I, John O. Sims, a notary public in and for said county, do hereby certify that the facts by me stated as aforesaid are true, and that the foregoing answers were by the said witness, W. B. Aikin, sworn to and subscibed before me.

Given under my hand, officially, and seal of office, at office, in said county, this 1st day of April, A. D. 1867.

(Signed) JOHN O. SIMS,
Notary Public Red River County.

Circuit Court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

Commission for defendant, issued February 25th, 1867, returned and filed May 1st, 1867, in cases No. 3857 and No. 3899.

148 To J. E. Ellet, notary public, or Maybray & Culbertson, attorneys, at Jefferson:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you Wright, witness, and him duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in two causes now depending in the said court, wherein John P. Tweed is plaintiff and Benj. F. Flanders is defendant; and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said causes, and send also this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Or-
149 leans, this 25th day of February, anno Domini 1867, and the 91st year of the independence of the United States of America.

(Signed) CHAS. CLAIBORNE, *Clerk*,
[SEAL.] By F. B. VINOT, *D'y Cl'k.*

United States Circuit Court, district of Lousiana.

Interrogatories-in-chief.

J. P. TWEED
vs.
B. F. FLANDERS.

Interrogatories to be administered to Wright, of late Wright & Harrison, of Jefferson, Texas, a witness to be examined on the part of B. F. Flanders, defendant in the above-entitled cause.

First. Please state your name, residence, and business or profession.

Second. Do you know either, and which of the parties
150 named in the caption of this suit? If you know the plaintiff, state when and where you first knew him.

Third. Did you, on or about the 26th of February, 1866, sell to the plaintiff or to Charles E. Goodwin, at Jefferson, Texas, certain 23 bales of cotton, marked R. T., and for what price? Where was the same stored or deposited at the date of the sale?

Fnurth. What portion of said cotton, if any, was before and at the time of the sale, held under seizure by any agent or agents of the Treasury Department, and by whom; under what plea or pretense was the same so seized and held? If you shall state that it was seized and held under a charge that it had in any way belonged or been devoted to the cause of the Confederate States, or their government, and was therefore the property of the United States, please state, if you know, whether said Goodwin or the plain-
151 tiff (if he was there) knew that it was so under seizure, under the charge aforesaid.

Fifth. Do you whether the plaintiff or said Goodwin claimed or represented that they, or either of them, purchased said cotton under authority of a contract with the Treasury Department of the United States to buy confederate cotton under seizure or otherwise? Or state fully what representations were made to you by either Goodwin or the plaintiff on the subject of their authority to purchase confederate cottons, or such as were claimed to be.

Sixth. What was the market value at Jefferson, Texas, at the date of the sale of the said cotton, if it had been free of any charge or seizure as aforesaid? Was the price at which you sold influenced, in any degree, by the embarrassments resulting from said charge and seizure? How was it influenced, and to what extent?

Seventh. Can you state any other matter or fact within your knowledge which may be of benefit or advantage to the
152 defendant in this suit? If so, please to state the same as fully as if you were here specially interrogated thereunto.

(Signed) WHITTAKER & STUART,
Of Counsel for Defendant.

United States Circuit Court, district of Louisiana.

Cross-interrogatories.

J. P. TWEED
vs.
B. F. FLANDERS.

Cross-interrogatories to be propounded to Wright, of Jefferson, Texas, a witness to be examined on the part of plaintiff in the above-entitled cause.

1st cross-interrogatory. If you say you sold cotton to plaintiff, or to Charles E. Goodwin for him, was not said sale made in the month of March, 1866, and subsequent to the day of said month?

2d cross-interrogatory. Do you know the history of said
153 cotton, and did the same, or any portion thereof, ever belong to the so-called confederate government? Was not the only

ground upon which said cotton could be justly held by the Treasury officers that it was along with all the cotton in that region, captured property?

3d cross-interrogatory. If you say that plaintiff or his said agent spoke of said contract, did he not in substance represent that he had a contract with the government for the purchase of cotton which had belonged to the confederate government?

4th cross-interrogatory. State any other matter or thing which will make for the benefit of the plaintiff as fully as if you had been particularly interrogated with reference thereto.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Of Counsel for Plaintiff.

Testimony taken under commission.

THE STATE OF TEXAS, *County of Marion*:

154 I, D. B. Culberson, by virtue of a commission to me directed from the Circuit Court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit now in said court pending, wherein John P. Tweed is plaintiff and Benjamin F. Flanders is defendant, have caused the witness, A. W. Wright, named in said commission, to appear before me, and after being duly sworn true answers to make to the interrogatories accompanying said commission, the said witness answering thereto says:

To the 1st interrogatory he answers: That his name is A. W. Wright, he resides in Jefferson, and is a commission merchant.

To the 2d interrogatory he answers: He does not know either of the parties to this suit.

155 To the 3d interrogatory he answers: That W. H. Harrison, of the firm of Wright, Harrison & Co., of which firm witness was a member, sold to Charles E. Goodwin 23 bales of cotton, marked R. T., at the price of 75 dollars per bale in coin.

To the 4th interrogatory he answers: All of the said 23 bales were held under seizure by Charles Turnbull, United States Treasury agent, so called before and at the time of the said sale. The sale was made in the month of March, A. D. 1866. Godwin knew at the time the cotton was sold to him that it was under seizure and was claimed as cotton belonging to United States government.

To the 5th interrogatory he answers: That Goodwin represented that he purchased the cotton by virtue of a contract between Tweed, the plaintiff, and the Treasury Department, by which he was authorized to purchase cotton thus held.

156 To the sixth interrogatory he answers: That his best recollection is, that cotton was worth in this market 25 c. per pound in specie at the date of the sale; that the price at which the cotton was sold was influenced by the embarrassments resulting from said seizure. The price was lessened about fifty dollars per bale in specie.

To seventh interrogatory he answers: That he has stated all he knows that will benefit either party.

Cross-interroqatories.

To the 1st cross-interrogatory he answers: That the cotton was sold in the month of March, 1866.

To 2d cross-interrogatory he answers: I am not acquainted with the history of the cotton. It was alleged by the Treasury officers at the time of seizure that the owner of the said cotton had subscribed or pledged 23 bales of cotton to the government of the Confederate States, and these 23 bales sold to Goodwin, were taken out of
157 the owner's crop of forty bales in store with us as the cotton so pledged.

To 3d cross-interrogatory he answers: He did.

To 4th cross-interrogatory he answers: He has stated all he knows of the matter.

(Signed) A. W. WRIGHT.

THE STATE OF TEXAS, *County of Marion*:

I, D. B. Culberson, one of the commissioners in said commission named, do hereby certify that the facts by me stated as aforesaid are true, and that the foregoing answers were by the said witness, A. W. Wright, sworn to and subscribed before me.

Given under my hand this 16th day of April, 1867.

(Signed) D. B. CULBERSON.

158 Circuit Court of the United States, for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

Commission for plaintiff issued March 5th, 1867, *returned and filed April 27th*, 1867, *in case No.* 3857 *and No.* 3899.

To Nathaniel Appleton, esq., New York, or to any United States commissioner in New York:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you Epperson, and him duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in two cases now depending in the said court, wherein John P. Tweed is plaintiff and Benjamin F. Flanders is defendant; and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said causes, and send also this writ.

159 Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 15th day of March, anno Domini, 1867, and the 91st year of the independence of the United States of America.

[SEAL.] (Signed) CHS. CLAIBORNE, *Cl'k*,
By F. B. VINOT, *D'y Cl'k*.

United States Circuit Court, fifth circuit, (two actions.)

Interrogatories-in-chief.

JOHN P. TWEED
vs.
BENJ. F. FLANDERS. } No. 3857.

JOHN P. TWEED
vs.
BENJ. F. FLANDERS. } No. 3899.

Commission to issue by consent, formalities waived.
(Signed) WHITAKER & STUART, *For Def't.*

160 Interrogatories to be propounded to Epperson, in the city of New York, whose answers are to be used on the trial of these causes, on behalf of plaintiff.

Int'g 1st. What is your age, residence and profession?

Int'g 2d. Do you know either party to these suits? If yea, which party?

Int'g 3d. Do you know anything of the purchase of cotton by plaintiff in the spring of 1866, in the Red River country? If yea, please state all you know of such purchase, who he purchased of, what amount of cotton and for what price. State all the particulars and fully.

Int'g 4th. Do you know of any other matter or thing which if stated would be of value to plaintiff? If yea, state the same as fully as if specially interrogated thereon.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Of Counsel for Plaintiff.

Cross-interrogatories.

161 Cross-interrogatory 1st, on the part of Flanders: If you shall state, in answer to any of the foregoing interrogatories, that you acted as the counsel or attorney of W. B. Aitkin, or any other person or persons, in the sale of their cotton to the plaintiff, or his agent, Charles E. Goodwin, please state particularly with what object you were employed as attorney by said Aitkin or other persons. Was his or their cotton under seizure by the agents of the Treasury Department, and were you employed with the object o effecting a release of such seizure? Did you succeed in effecting the release? Was the cotton in any, and if in any, in what case formally released by the agent or sub-agents of the Treasury De partment, before you or the party owning it had agreed to or made bargain for its sale to the plaintiff Tweed, or his agent?

Cross-interrogatory 2d. Do you not know that Aitkin's co
162 ton and the other cottons belonging to citizens whose attorne you were, were persistently held under seizure by the agen

of the Treasury Department with the object of so harrassing them and intimidating them as to coerce them to sell their cottons to Goodwin, as Tweed's agent, at a less price than they were worth; and do you not know that this was done collusively with said Goodwin?

Cross-interrogatory 3d. Do you not know that Tweed or his agent bought Aitkin's or other cottons from owners, for whom you were attorney, under the representation that he had a contract with the Treasury Department, which authorized him to purchase cotton known or seized as confederate cotton, and that hence they sold to him when they could not, by themselves or their attorneys, get their cottons released from seizure, although there was no real
163 ground for such seizure and detention?

Cross-interrogatory 4th. Do you not know or did you not understand, that Tweed, or his agent, Goodwin, had some understanding and arrangement with General Burbridge and Col. Turnbull, agents of the Treasury Department, by which they were to forward his views, facilitate unlawfully his ends, and share in his profits of all such cottons as they held under seizure, which he might conclude purchases of from the owners; and did you not, in view of your convictions of the truth of such rumors and impressions, advise your client Aitkin and others that they had better sell to Goodwin at less than the market value of their cottons? Did you not also so advise William H. Gill, of Red River county, who had a very large amount of cotton also under unlawful seizure? And do you not know that Burbridge and Turnbull, colluding with Goodwin in their own
164 and the interest of said Tweed, endeavored to coerce (by the means before referred to) the said Gill to sell his cotton, under similar seizure, to said Tweed?

Cross-interrogatory 6th. Have you ever seen the telegraphic dispatch hereto annexed, and marked in red ink "A," signed by J. P. Tweed? Did you see or know of the dispatch, marked in red ink "B," dated 2d March, 1866, signed "C. E. G.;" and do you know that the same despatch was sent by Charles E. Goodwin to Col. Turnbull; and was the purchase from Aitkin and Mrs. Boyd made on that date or before, and when?

Cross-interrogatory 7th. Did you see or know of the despatch being transmitted from said Goodwin, copy hereto annexed, marked "C," dated 8th March, 1866, and signed "Goodwin & Porter;" and was the same written and sent by said Charles E. Goodwin, agent of the plaintiff?

165 Cross-interrogatory 8th. Did you see or know of the despatch being transmitted from said Goodwin to said Col. Turnbull, copy hereto annexed and marked "D," dated 9th of March, 1866, signed "G. & B.;" and were said initials intended to stand for Goodwin and Burbridge; and was the same written and sent by said Charles E. Goodwin, the agent of the plaintiff?

Cross-interrogatory 9th. Did you ever see a letter written by S. G. Burbridge and addressed to Col. Charles J. Turnbull, dated at Shreveport, March 3d, 1866, of which the annexed exhibit "E" is a copy? Was the same borne by said Goodwin to said Turnbull, and

was the same in the handwriting of said Burbridge, exhibited by said Goodwin to you?

Cross-interrogatory 10th. Were you, before you concluded the sale of your client's cotton to said plaintiff, made aware of the relations subsisting between the plaintiff, his agents and the said Burbridge and Turnbull, agents of the Treasury Department,
166 evinced by said telegrams and said letter of Burbridge?

Cross-interrogatory 11th. Do you know the fact that J. W. Brodwell, now of New Orleans, offered Mr. W. B. Aitkin thirty-five cents a pound for his cotton, which was under seizure as aforesaid, if he could get it released from the hands of the Treasury agents, and that he failed to get that price solely because he could not effect its release?

Cross-interrogatory 12th. Finally, did you not advise your client to sell at the price they did sell to the plaintiff, and greatly under the market price of the cotton had the same been free from seizure, for the sole reason that you thought and told them they would save money by it; that the expenses, harrasment and difficulties which would be interposed by said Treasury agents would cost them more than the difference; that Tweed was authorized to purchase,
167 under his contract with the government, all government cottons, and such as were under seizure as such, and could safely pay the money without risk? And did not said plaintiff or his agent represent to you that by their contract they were compelled to pay one quarter of the cotton, or its value, to the United States, and therefore could not pay the full market value of the cotton; and did you not so represent to Mr. Aitkin and your other clients that fact, as stated by you?

(Signed) WHITAKER & STUART,
Of Counsel for Flanders.

Exhibits A, B, C and D & E, annexed to foregoing cross-interrogatories:

Exhibit A.

SHREVEPORT, *Feb'y 20th*, 1866.

To Mr. Chas. E. Goodwin, Jefferson, Texas:

168 Buy Gill's or any cotton in Turnbull's hands, of owners, at thirty per bale, subject to Turnbull's claim.

J. P. TWEED.

Exhibit B.

(By telegraph from Shreveport, 2nd, 1866.)

MARCH 2D, 1866.

To Col. Turnbull:

Have closed with Aiken and Boyce. Will be up soon. All O K.

C. E. G.

[13 w., pd, 90.]

Exhibit C.

(By telegraph from Shreveport, 8th, 1866.)

MARCH 8TH, 1866.

To Col. C. J. Turnbull:

Steamboat Era left last evening for Moore's landing for Gill's cotton, with funds to pay charges.

GOODWIN & PORTER.

[16 w., pd, 1 05.]

169 *Exhibit D.*

(By telegraph from Shreveport, 9th, 1866.)

MARCH 10TH, 1866.

To Col. Turnbull:

Hold out for seventy-five thousand (75,000) on the G. cotton. We do our best for you.

G & B.

[16 w., p'd, 1 05.]

Exhibit E.

(Copy.)

SHREVEPORT, *Mar.* 3*d*, 1866.

Col. Charles J. Turnbull:

DEAR COL.: I regret not being able to come up to see you with Charlie Goodwin to-morrow. As I can't come I write by him. Old Gill stopped at this place ten days, and after seeing some meddlesome parties, backed out from his proposition to sell his cotton to Goodwin. I notified him that as he was about to leave for New Orleans, that I notified him to present his affidavits, as his cotton
170 would soon all arrive, and I should then adjudicate his case. He left at noon to-day without leaving any papers. I wrote to the Col. not to give him any encouragement and to send him back for me to adjudicate his case. I am pretty sure he will sell on his return, and I will see that the arrangement made by Goodwin shall be carried out. If Gill will not sell I will then hold him so as to give you a chance to make the best terms you can with him. Goodwin will not interfere if he fails to purchase. Do all you can to aid him in buying all the cotton he can. I am satisfied that G. will carry out any agreement he may make with you. Send forward the Gill cotton as fast as you can; also the evidence you may have in his case, as well as all others under seizure by you. I should suggest to you to get as much of the cotton out of the Indian territory as you
171 can, as I learn that the Secretary of War has given a party a

contract to get out all government property. What is done be done as soon as possible.

Will write to you again soon.

Yours, truly,

(Signed) S. G. BURBRIDGE.

United States Circuit Court, district of Louisiana.

Interrogatories-in-chief.

JOHN P. TWEED *vs.* B. F. FLANDERS. } No. 3857.

JOHN P. TWEED *vs.* B. F. FLANDERS. } No. 3899.

Re-direct questions to be propounded to Charles E. Goodwin, a witness to be examined on behalf of plaintiff:

Were you aware that a dispatch was received by S. G. Burbridge, on or about the 8th day of March, 1866, with reference to the
172 revocation of contract for the purchase of cottons? If yea, had the plaintiff any information that his contract was annulled before said dispatch? If yea, state when and how and from whom plaintiff received such information, and in substance what the same was. If you say that plaintiff had such prior information, state how the time of the purchase of said 495 bales compared with the time of plaintiff's receiving said information.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Attorneys for Plaintiffs.

Cross-interrogatories to be administered to the said Charles Goodwin on the part of defendant.

1st. Where was the plaintiff on the eighth day of March, 1866. Was he any where in the Red river country during that month. Where was he when he made the purchase of the Aitkin and
173 other cottons bought in the month of March, 1866.

2d. If O. H. Burbridge did not receive information of the revocation of the contracts of Tweed and Turnbull, himself, before the 8th of March, please state whether you know of your own knowledge of any way in which the plaintiff received information of it at any earlier date. Had you, as the agent of the plaintiff in the purchase of cottons under his contract, at any time a contract, agreement, or understanding, written or verbal, to pay and allow Chas. J. Turnbull twenty-five dollars per bale, or fifteen dollars, or any other and what sum per bale, for all such cottons as you were enabled to purchase, and which he held under seizure at the date of your purchase? And did you not purchase the Aitkin cotton under such an agreement: and did you not attempt the purchase of the Gill cotton, then under

seizure, and other cottons, under the same agreement or understanding?

174 3d. Did you not promise Gen'l S. G. Burbridge that you would pay Turnbull the sum of twenty-five or fifteen dollars per bale, as before enquired of, for all such purchases.

4th. After you came down from the Red river, and the cottons you had bought were received at New Orleans, did not some controversy arise between yourself or the plaintiff and Col. Turnbull, or some of his friends acting for him, as to the sums you were to pay as aforesaid, he or they on his behalf claiming twenty-five dollars per bale, and you insisting the agreement was but for fifteen.

5th. Did you know on the 2d of March, 1866, the date of your purchase of the Aitkin cotton, that the Tweed contract or the Turnbull contract as they were called, had been revoked by the Secretary of the Treasury.

(Signed) D. STUART & WHITTAKER,
Of Counsel for Def't.

175 It is stipulated that the following cross-interrogatories shall be propounded to Charles E. Goodwin whose deposition was heretofore taken without cross-examination on the part of the plaintiff. and that the same may be used on the trial of the causes of Tweed vs. Flanders in the Circuit of the United States for Louisiana, to be taken under the commission issued for the examination of Epperson in New York.

(Signed) SULLIVAN, BILLINGS & HUGHES,
For Pl'ff.
STUART & WHITTAKER, *for Def't.*

First cross-interrogatory. Please examine the exhibits annexed to the cross-interrogatories (foregoing) propounded to Epperson, esq., and marked respectively A, B, C, D and E, and state whether you received from the plaintiff the dispatch marked "A?" Did you transmit by telegraph the dispatches marked B and C ; Did you transmit a dispatch of which the copy "D" is a true copy. Does the G

176 in the body of said dispatch refer W. H. Gill? Does the signature to said dispatch, "G and B," indicate Goodwin and Burbridge? if not what names do said initials indicate.

Second cross-interrogatory. Did you bear, from Stephen G. Burbridge to Col. Turnbull, the letter, a copy of which is marked "E," (annexed as above,) and were you cognizant of the contents of said letter.

Third cross-interrogatory. Had you any, and if any bargain, agreement, or understanding with either Stephen G. Burbridge or C. J. Turnbull, or both of them, that either of them should have any share or interest in the profits of such cottons as you were enabled to purchase, which were under seizure by the agents of the Treasury Department, or any of them? If so, what was such agreement or understanding? Or if you shall say, that you had no such un-

177 derstanding with them or either of them, state whether you

made or had any such agreement or understanding with any person or persons representing or claiming to represent either of them? Did you advance any moneys to or for Burbridge or Turnbull for the ostensible purpose of paying charges on any cotton under seizure, (other than such cottons as you made purchase of,) and if so, how much, at what dates, and upon what cottons? Have you, or the plaintiff to your knowledge, ever recovered back such advances? if so, from whom was the money received? when was it repaid.

Fourth cross-interrogatory. In the statement of your accounts of payments and disbursements rendered to the plaintiff of your operations as his agent in Red river, during the period you so acted in the purchase of the cotton in controversy, did you return any charge for money advanced, loaned or paid to S. G. Burbridge
178 or C. J. Turnbull, or to any person for them or either of them, and which had not, at the time of the rendition of your account, been repaid? if so, how much, or to whom was such money paid or advanced?

(Signed) WHITAKER & STUART,
Of Counsel for Flanders.

Plaintiff, reserving all legal objections to the foregoing, declines to cross the same.

(Signed) SULLIVAN, BILLINGS & HUGHES,
For Plaintiff.

Testimony taken under commission.

Deposition of a witness produced, sworn and examined, by virtue of the annexed commission, on the twenty-seventh day of March, one thousand eight hundred and sixty-seven, at the city of New York, in the county and State of New York, before me, Nathaniel Appleton, a commissioner named in said commission, in two certain
179 causes now depending in the Circuit Court of the United States for the fifth judical circuit, district of Louisiana, between John P. Tweed, plaintiff, and Benjamin F. Flanders, defendant, on the part of the said plaintiff.

Benjamin H. Epperson, being produced and sworn, answers as follows to the interrogatories propounded in these causes:

1st. To the first interrogatory he saith: My age is 42 years; residence, Clarksville, Texas; my profession, lawyer.

2d. To the second interrogatory he saith: I am acquainted with the plaintiff only.

3d. To the third interrogatory he saith: I do know of plaintiff purchasing from four hundred to five hundred bales of cotton in the Red river country in the spring of 1866. On or about the third day of March, 1866, one lot of this cotton, consisting of about four hundred and five bales, belonging to Wm. B. Aikin, who resides near me in Red river county, Texas, I sold, as his attorney, to the plain-
180 tiff, through Charles E. Goodwin, acting for the plaintiff in this transaction, for which I received eighty dollars in gold

per bale, and five thousand dollars in currency as charges for my fees as attorney for Aikin. The plaintiff also assumed to pay, and did pay, all the charges which accrued upon said cotton for storage on the same at Jefferson, Texas, and transportation to and charges at Shreveport, La. This cotton was sold according to warehouse receipts at Jefferson, Texas, and not according to actual count of bales, of which fifteen bales had, at and prior to that time, been stolen, for which the plaintiff paid the same price. A few days thereafter I sold to the plaintiff, in like manner, for sixty dollars per bale, in gold, ten other bales cotton belonging to John L. Carroll, also of Red river county, Texas, which had been forcibly seized and shipped by
181 U. S. Treasury agents from said Jefferson, which was also sold according to warehouse receipts at Jefferson, and not by actual count. I also know that the plaintiff, in like manner, bought of Mrs. Mary L. Boyce, of Red river county, Texas, about forty bales cotton, for which he paid eighty-five dollars per bale, in gold. Also, that he purchased of Mrs. Boyd, of Bowie county, Texas, about thirty-two bales of cotton. I have no personal knowledge of what he paid for this last-mentioned lot. All of the aforementioned cotton had been previously seized by one C. J. Turnbull, at Jefferson, U. S. Treasury agent, or claiming to be so, and his subordinates, under the pretext that it was cotton belonging to the United States.

4th. To the fourth interrogatory he saith: I know of no other matter or thing which, if stated, would be of advantage to the plaintiff in these causes.

First. To the first cross-interrogatory he saith: I was em-
182 ployed as the attorney for W. B. Aikin and John L. Carroll for the purpose of procuring the release of their cotton from seizure. I failed to secure its release. The said cotton was not formally released, or in any manner released, by the agent or sub-agents of the Treasury Department, before myself or the parties owning the same had agreed to or made a bargain for its sale to the plaintiff or the plaintiff's agent.

Second. To the second cross-interrogatory he saith: I do not know that it was held for the purpose of enabling Goodwin to buy it. I do not think it was. I did not think he was the party favored by those who seized it, because they always seemed greatly annoyed by his purchasing any under seizure, and because he was willing to give more liberal prices than others who were attempting to buy at mere nominal prices. I cannot know positively what were the mo-
183 tives which actuated the agents in seizing the cotton alluded to. But, from the circumstances, I believe it was done to swindle the owners out of it for the benefit of these agents. And the persistently holding on to it and refusing to release, however clearly it might be shown to be unjustly held, was one of the schemes devised to force the owners to sacrifice it at a mere nominal price. And I also believe that there was collusion between the agents and cotton purchasers, of whom there was a large number at Jefferson and Shreveport. But I do not think there was any such collusion with Mr. Goodwin, because the seizures of the largest lots had been made

before he came to Jefferson, and, as before stated, he gave better prices and seemed to so disconcert the agents and other purchasers.

Third. To the third cross-interrogatery he saith: It was represented to me that Mr. Tweed had some arrangement with the Treasury Department by which he was authorized to purchase
184 cotton, but what that was I do not know. But whatever it may have been, it was not made a basis for these sales or a reason for them.

Fourth. To the fourth cross-interrogatory he saith: I do not know of any arrangement of the character referred to in the fourth cross-interrogatory. I did advise the sale of the cotton at the prices at which it was sold, not, however, because I knew of any such an arrangement as that alluded to, but because I was satisfied that Turnbull and Burbridge would not release to them the cotton, and that the price offered for it by Mr. Tweed was more than could be realized for it by the then owners in view of the manipulations it was daily undergoing. I did not advise a sale to Goodwin particularly, only so far as he was willing to give more than any other person. I did advise Mr. Gill to sell his cotton to Goodwin at the price he
185 offered, because I thought it more than he could ever realize for it otherwise. I do not know of any such collusion between the parties mentioned in the latter part of said fourth cross-interrogatory in relation to the Gill cotton.

Sixth. To the sixth cross-interrogatory he saith: I have never before seen the telegraph dispatch hereto annexed and marked in red ink "A." I have not seen before the dispatch marked in red ink "B," and know nothing in relation to it. I have hereinbefore stated, as near as I am able, the date of the purchase from Aiken and Mrs. Boyce.

Seventh. To the seventh cross-interrogatory he saith: I know nothing whatever in relation to the dispatch annexed and marked "C."

Eighth. To the eighth cross-interrogatory he saith: I know nothing whatever in relation to the dispatch annexed and marked "D."

186 Ninth. To the ninth cross-interrogatory he saith: I know nothing whatever in relation to the letter referred to in the ninth cross-interrogatory, and of which what purports to be a copy and marked "E" is annexed.

Tenth. To the tenth cross-interrogatory he saith: I know of no such relations existing as referred to in the ninth cross-interrogatory either before or since the sale.

Eleventh. To the eleventh cross-interrogatory he saith: I do not know of any such offer by Mr. Brodwell to Mr. Aiken, as referred to in the eleventh cross-interrogatory.

Twelfth. To the twelfth cross-interrogatory he saith: I did advise the sale of the cotton, at the prices at which it was sold, because I believed that more would thus be realized from it than could otherwise, and I did give this advice, because of the harasment
187 and difficulties which I believed the treasury agents would interpose, and that the risk and difficulties to be overcome in

getting their cotton released were greater than the difference in the price offered, and that which could be obtained if it were released. But I did not give this advice because Tweed had any such contract as alluded to in the twelfth cross-interrogatory. His alleged contract had no influence with me in advising the sale to him, but I advised it to him because he offered more than any other one. He never represented to me, that under any circumstances he was compelled to pay one-fourth of the cotton to the United States, but, upon the contrary, I understood from him that if the cotton did in fact prove not to be liable to seizure he would not have to pay any of it to the government. I did not care anything for the terms of the alleged contract. The representations were made to Mr.
188 Aiken, in regard to the whole transactions, that were to me, as he was present and assisting in the negotiations himself, and signed the contract in person.

(Signed) B. H. EPPERSON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 27th day of March, 1867, before me.

(Signed) NATH'L APPLETON,
Commissioner.

Examination adjourned to April 22d, 1867.

(Signed) NATH'L APPLETON,
Commissioner.

Examination resumed.

APRIL 22*d*, 1867.

Charles E. Goodwin, a witness whose deposition is taken by consent under the annexed commission, being produced and sworn on this the 22d day of April, in the year of our Lord one thousand
189 eight hundred and sixty-seven, answers as follows to the interrogatories propounded in these causes:

First. To the first interrogatory he saith: I was aware that a dispatch was received by S. G. Burbridge on or about the 8th day of March, 1866, in reference to the revocation of contract for the purchase of cottons. I refer to Mr. Tweed's contract. Mr. Tweed had information prior to that, that his contract was or would be annulled. On or about the 28th day of February, 1866, Mr. Tweed stated to me that he had received from W. P. Mellen, and from Mess. Burbridge the information, that said contract had been, or would be, annulled. I do not know how this information was communicated to him by said Mellen, and the Mess. Burbridge; that is through what channel they communicated this information. The said information was communicated to me on or about the 28th day of Feb-
190 ruary, 1866, which was some four or five days prior to the purchase of said 495 bales of cotton.

First. To the first of the cross-interrogatories he saith: The plaintiff was, to the best of my recollection, at Shreveport, La., on the

8th day of March, 1866. He was in the Red river country during the month of March, 1866. The plaintiff was at Shreveport, when I made the purchase of the Aiken and other cottons, in March, 1866.

Second. To the second cross-interrogatory he saith: General S. G. Burbridge and the plaintiff, Mr. Tweed, both informed me prior, to the purchase of the 495 bales of cotton, that the contract held by Mr. Tweed, had been, or would be, annulled. I do not know when O. H. Burbridge received information of the revocation of said contract. I only know of the source of the knowledge of the plaintiff in the matter, than as I have before stated. I understood from S.

B. Burbridge, that all contracts for the purchase of cottons
191 in that district was, or would be, annulled. I never have, as the agent of plaintiff, any agreement or contract with Charles J. Turnbull to allow him any sum per bale for any cottons purchased under Mr. Tweed's contract, and which Mr. Turnbull held under seizure at the time of purchase. The Aiken cotton was not purchased under any such agreement. Mr. C. J. Turnbull did make overtures to me to allow him a consideration per bale on the purchase of the Gill cotton in case it was made. The Gill cotton, however, was not purchased by me. No cotton was purchased by me as the agent of Mr. Tweed, or otherwise under any such agreement as referred to. I took into consideration the proposition of Mr. Turnbull's, and attempted the purchase of Gill's cotton only, but, as I have before stated, I did not purchase it.

Third. To the third cross-interrogatory he saith: I never
192 promised General S. G. Burbridge, that I would pay Mr. Turnbull the sum of twenty-five or fifteen dollars, or any other sum per bale on any cottons purchased.

Fourth. To the fourth cross-interrogatory he saith: I never had any controversy at any time with Col. Turnbull or any of his friends acting for him, or with any other party, in relation to any allowance per bale on cottons purchased, nor do I know of Mr. Tweed having any conversation or controversy with any one upon said subject.

Fifth. To the fifth cross-interrogatory he saith: I did know through General Burbridge and the plaintiff, prior to March 1st, 1866, that the Tweed and the Turnbull contracts was, or would be, annulled; Gen. Burbridge stating that the official notice of such revocation was hourly expected.

First. To the first of the 2d series of cross-interrogatories he saith: I did receive from the plaintiff a dispatch of which ex-
193 hibit "A" is a copy. I did transmit a dispatch by telegraph of which exhibit "B" is a copy. I know nothing of the dispatch marked exibit "C." I know nothing of the dispatch of which exibit "D" purports to be a copy, nor what the G. therein refers to. I do not know what the signature G. and B. indicates.

Second. To the second of said cross-interrogatories he saith: I did bear a letter from Stephen G. Burbridge to Col. Turnbull, which was under seal, and I never knew the contents thereof, nor whether exibit "E" is a copy.

Third. To the third of said cross-interrogatories he saith: I never

had any bargain, agreement or understanding with either Turnbull or S. G. Burbridge or both of them, to share, under any circumstances, in any of the profits of any cotton, I might purchase, nor with any person or persons claiming to represent them or either of
194 them. I never advanced any moneys to or for Burbridge or Turnbull for the ostensible purpose of paying charges upon cotton which I did not purchase, whether under signature or not.

Fourth. To the fourth of said cross-interrogatories he saith: I did not in the statement of my accounts of payments and disbursements, rendered to the plaintiff of my operations as his agent in the Red river country, during the time I was purchasing the cotton in controversy, return any charge for money advanced, loaned or paid to S. G. Burbridge or C. J. Turnbull, or to any person for them, or either of them, and which had not at the time of the rendition of my accounts been repaid. I did at one time loan Gen'l S. G. Burbridge, at Jefferson, Texas, four thousand dollars, as near as I can recollect, for
195 which I took draft drawn on himself by C. J. Turnbull by directions of Gen. Burbridge, and which was by General Burbridge at that time accepted, and subsequently paid to me by Gen'l Burbridge at Shreveport.

(Signed) CHAS. E. GOODWIN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 22d day of April, 1867, before me.

(Signed) NATH'L APPLETON, *Commissioner.*

I, Nath'l Appleton, commissioner, do hereby certify that Benjamin H. Epperson and Charles E. Goodwin, the deponents were by me severally sworn to declare the truth on the questions put to them in these cases, that the interrogatories and cross-interrogatories were produced to them, and their answers thereto taken in writing and subscribed by them respectively in my presence on the days,
196 and at the place, in that behalf first aforesaid.

[SEAL.] (Signed) NATH'L APPLETON,
Commissioner.

I certify that my fees as commissioner in these cases are fifty dollars.

[SEAL.] (Signed) NATH'L APPLETON,
Commissioner.

Order.

Cause continued by consent. Extract from minutes of May 30th, 1867.

JOHN P. TWEED
vs.
B. F. FLANDERS, SUP. SPEC. OF the Treas'y Dept. } No. 3,857.

By written consent of counsel this cause is continued till Friday, 14th June, next at 11 a. m.

U. S. Circuit Court.

Peremptory exception.—Filed January 29th, 1868.

JNO. P. TWEED
vs.
BENJ. F. FLANDERS. } No. 3,857.

197 And now come defendants in above entitled suit, and peremptorily except to the right of plaintiff to stand in judgment in above-entitled suit, because they say that the plaintiff is not and never was the owner of the claim sued on, but that he owns therein, but a 2-3 interest and that the other 1-3 interest in the 123 bales sequestered in this suit and sued for by said plaintiff is, and has at all times been in one E. L. Scott.

They therefore except to said suit, and ask that the same be dismissed, the said plaintiff being absolutely without right to stand in judgment in above entitled suit.

(Signed) STUART & WHITAKER,
Of Counsel.

United States Circuit Court, district of Louisiana.

Note of evidence.—Filed January 29th, 1868.

198 J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

Note of evidence; plaintiff offered deposition of Mr. Burbridge on file, "transcribed at page 62."

Mr. Scott sworn for defendant.

Defendant offered contract "A."

Contract "A," offered in evidence by defendant, and filed January 29th, 1868.

Whereas it is represented that large quantities of cotton which formerly belonged to the late so-called confederate States, are now in possession of individuals in the Red river country, concealed from the knowledge of agents appointed to collect the same, and that the marks by which such former ownership could have been proved have been destroyed for the purpose of enabling the individuals holding it to convert it to their own use:

199 And whereas it is also represented that most of this cotton is held at places and in districts remote from military posts, so that if it could be found and identified, it could not be brought forward by the agents, except by incurring the expense of obtaining military force to aid in its removal, and that the parties holding it dare not bring it within the reach of civil or military authorities, for fear that its true character may be discovered, thereby causing its seizure:

And whereas it is also represented that a large portion of this cot-

ton can be purchased from the holders at much less than its real value, if the purchaser will take the title at his own risk of seizure by government authorities.

Now, therefore, it is hereby agreed by and between John P. Tweed of Cincinnatti, Ohio, and Oscar H. Burbridge, supervising special agent appointed by the Secretary of the Treasury to collect capture, cotton in the third agency as follows, viz:

200 Said Tweed hereby agrees to furnish all money, necessary to purchase the cotton aforesaid, together with all the assistants necessary for the purpose, and all requisite means of transportation, and to use all proper efforts to purchase as much of said cotton situated upon and near the Red river and its tributaries, as can be purchased, prepared for shipment, and transported to and delivered at New Orleans at a cost of not exceeding three-fourths its market value there, and to deliver the same to said Burbridge in New Orleans in good shipping order, with receipted bills of sale thereof from the holders, free and discharged of all cost of purchase, expense of preparation for shipment, or of transportation or otherwise connected therewith.

Said Burbridge hereby agrees that upon the delivery to him as aforesaid of each lot of cotton so purchased, with receipted
201 bills of sale thereof from the holders, and free and discharged of all cost and expense of purchase, preparation for shipment, transportation or otherwise relating thereto, he will pay and deliver to said Tweed three-fourths of the same, of average quality, as compensation in full for his services and for all cost of purchase, expense of preparing the same for shipment, or transportation or otherwise incurred by him in relation thereto. Such payment and delivery to be considered as a sale by the United States, so that the cotton so paid and delivered to said Tweed shall not be subject to the payment of internal revenue by him or by his assigns; or, in case it shall be so held, then said internal revenue shall be paid by said Burbridge.

It is further mutually agreed that this contract shall be by said Burbridge promptly submitted to the Secretary of the Treas-
202 ury for his approval, and that if it should not be approved by him, said Burbridge shall immediately notify said Tweed thereof, and the contract shall thereupon be terminated. But any cotton which shall have been purchased by said Tweed before the receipt of such notice shall be faithfully forwarded by him to said Burbridge, and delivered under this contract, subject however to payment by him of the three-fourths thereof in manner aforesaid. It is also mutually agreed that this contract shall at all times be subject to revocation by the Secretary of the Treasury, or by his direction, such revocation to be made subject to the completion of any transactions previously commenced under it, in accordance with the provisions herein contained.

In witness whereof we have hereunto set our hands this 23d day of January, 1866.

203 (Signed) J. P. TWEED.
O. H. BURBRIDGE,
Sup. Sp'l Ag't 3d Agency T. D.

Hearing of cause and judgment.

Extract from minutes of January 29th, 1868:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

This cause came up for trial.
Sullivan, Billings & Hughes for plaintiff.
J. S. Whitaker and D. Stuart for defendant.

And the court having overruled the peremptory exception now filed by the defendant, the trial proceeded, and after hearing the pleadings, evidence and counsel, it is ordered, adjudged and decreed
that the plaintiff John P. Tweed, be recognized as the lawful
204 owner of the property sequestered in this case, and that the bond by him furnished for the release of the same be cancelled and annulled. It is further ordered that defendant pay costs of suit.

Rule for a new trial.

Extract from minutes of February 1st, 1868:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

On motion of S. H. Torrey, district attorney, and of Stuart & Whitaker, of counsel for B. F. Flanders, defendant, it is ordered that plaintiff show cause on Saturday, 8th instant, at 11 o'clock a. m., why a new trial should not be granted in this case on the grounds filed.

United States Circuit Court.

Rule and grounds.—Filed February 1st, 1868.

205 JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

On motion of Samuel H. Torrey, district attorney, and of Stuart and Whitaker, of counsel for B. F. Flanders, defendant, and upon suggesting to the court that there is error in the judgment herein rendered on the 29th of January last to the prejudice of said defendant, it is ordered by the court that plaintiff show cause on Saturday the eighth day of February next, at eleven a. m., why a new trial should not be granted in this case for the reasons following, to wit:

First. That the cotton forming the subject of this suit was pur-

chased by said plaintiff under the provisions of the contract of 23d of January, 1866, and before the revocation of the same.

Second. That the acts of said plaintiff, up to the very mo-
206 ment of the demand made for said cotton from defendant, shew that he recognized the contract in question as binding upon him; that he shipped the cotton in question to O. H. Burbridge; that he received the three-fourths of the entire shipment, and that by the very terms of said contract any cotton purchased under its provisions prior to its revocation should be subject to the deduction of one-fourth.

Third. That said cotton was purchased, forwarded and delivered to the said Burbridge by said Tweed, with full understanding on the part of all parties in interest concerning the deduction of one-fourth, that is to say the deduction of one hundred and twenty-three bales from four hundred and ninety-five bales.

Fourth. That the one hundred and twenty-three bales were
207 clearly shown under the evidence adduced to be, under the provisions of said contract, the property of the United States.

Fifth. That said judgment is otherwise contrary to law and evidence.

Marshal's return on the foregoing rule.

Received, Feb'y 3d, 1868, by the U. S. marshal, and on same day of Feb'y, 1868, served copy of within rule on Sullivan, Billings and Hughes, attorneys named herein, in the hands of Mr. Lincoln, their clerk, at office 82 Custom-house street in this city.

New Orleans, February 5th, 1868.

(Signed) S. W. REED,
Deputy U. S. Marshal.

Rule for a new trial on additional grounds.

Extract from minutes of February 7th, 1868:

208 JOHN B. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

On motion of S. H. Torrey, district attorney, and of Messrs. Stuart and Whitaker, of counsel for the defendant, it is ordered by the court that plaintiff show cause on Saturday, 8th instant, at 11 a. m., why a new trial shall not be granted in this case on the additional grounds filed.

Circuit Court of the United States.

Additional grounds.—Filed February 7th, 1868.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

On motion of S. H. Torrey, district attorney, and of Messrs. Stuart and Whitaker, of counsel for the defendant, it is ordered by the court that plaintiff show cause on Saturday, the 8th day
209 of February next, why a new trial should not be granted in this case for the following grounds, in addition to those set forth in a rule taken in this cause on the 1st day of February last past, to wit:

That since the trial of this cause, the defendant, B. F. Flanders, has discovered new and important evidence and material to the issue; although he had used every effort and diligence in his power to procure the testimony necessary to the defence, to wit:

That Scott, Cage & Co. and C. A. Weed & Co. were interested as partners in the contract of J. P. Tweed, plaintiff, and O. H. Burbridge, supervising special agent of the Treasury Department of the United States, under which was purchased the cotton forming the subject of this suit, and had between themselves a contract in writing which determined their interests in said cotton; which
210 said contract in writing is in the possession of one or either of said contracting parties in this city and can be procured by an order of this court; and that by virtue of said contract last above mentioned the said Scott, Cage & Co. and the said C. A. Weed & Co. have assented, as agents and co-partners of said Tweed, to the division of the 495 bales of cotton in controversy in suits Nos. 3,857, 3,872 and 3,899 in this court, by which one fourth thereof was reserved to the government of the United States, and that in the division made of said cotton they signed their names accepting said division, which paper and document is now in possession of this mover, though until he was aware of the existence of the said contract between the said Scott, Cage & Co., the said C. A. Weed & Co. and the said J. P. Tweed, he was not aware of the pertinency and relevancy of said document.

211 STATE OF LOUISIANA, *Parish of Orleans, ss:*

B. F. Flanders, being duly sworn, deposes and says: That all the facts set forth in the foregoing motion are true, that he has discovered the matters in said motion material to his suit since judgment was rendered in said suit, although he had used every effort and diligence in his power to procure.

(Signed) BENJ. F. FLANDERS.

Sworn to and subscribed before me this 7th day of February, A. D. 1868.

(Signed) K. LOEW,
D'y Cl'k U. S. Dist. Court.

Marshal's return on the foregoing.

Received February 8th, 1868, and on same day, month and year, served a copy of the within rule and grounds on E. C. Billings, personally, at his office, No. 82 Custom-house street.

(Signed) H. J. SAMSON,
Dep'y Marshal.

212 United States Circuit Court.

Bill of exception.—Filed February 8th, 1868.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

NEW ORLEANS, LA., *Feb'y 8th*, 1865.

Be it remembered that on the trial of this cause, defendant offered to show by the testimony of John P. Tweed, plaintiff in this suit, and J. L. Scott, that the said John P. Tweed had a partner in interest in the claim set up against B. F. Flanders, and under the peremptory exception the said Tweed was absolutely without right to stand in judgment alone and without joinder of his said party in interest, to which said testimony plaintiff by his counsel objecting, upon the grounds that said exception had been overruled by the
213 court, and that the defendant's plea of non-joinder was too late and could not be allowed after issue joined on the merits, and was inconsistent with his plea to the merits, to wit, that the property claimed was the property of the United States, which objections were sustained by the court and said testimony ruled out.

Whereupon defendant by his counsel excepted, and takes this his bill of exceptions and prays that the same may be signed.

(Signed) E. H. DURELL, *Judge.*

Order.—Continuance of rule.

Extract from minutes of February 8th, 1868:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

The rule herein returnable this day is, by consent of counsel, continued till Wednesday 12th instant, at 11 a. m.

214 *Order.—Rule discharged and a new trial refused.*

Extract from minutes of February 12th, 1868:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

The rule for a new trial, taken by defendant on 1st instant, came up.

United States attorney and Whitaker and Stuart for plaintiff, in rule.

Sullivan, Billings and Hughes for defendant, in rule.

When after hearing argument, for reasons orally assigned, it is ordered that the rule be discharged and a new trial refused with costs.

Circuit Court of the United States, fifth circuit and district of Louisiana.—November term, 1867.

Final judgment from judgment docket.

215 NEW ORLEANS, *Wednesday, January 29th*, 1868.

Court met pursuant to adjournment. Present: Hon. E. H. Durell, dist. judge.

JOHN P. TWEED
vs.
B. FLANDERS. } No. 3,857.

This cause came up for trial.

Sullivan, Billings and Hughes for plaintiff; J. S. Whitaker and D. Stuart, for defendant.

And the court having overruled the peremptory exception now filed by the defendant, the trial proceeded, and after hearing the pleadings, evidence and counsel:

It is ordered, adjudged and decreed, that the plaintiff, John P. Tweed, be recognized as the lawful owner of the property sequestered in this case, and that the bond by him furnished for the release of the same be cancelled and annulled.

It is further ordered, that defendant pay costs of suit.

216 Judgment rendered January 29th, 1868.

Judgment signed, February 13th, 1868.

(Signed) E. H. DURELL, *Judge.*

In the Circuit Court of the United States for the fifth judicial circuit and district of Louisiana.

Petition for writ of error.—Filed February 21st, 1868.

JOHN P. TWEED
versus
BENJAMIN F. FLANDERS, DEPUTY GENERAL Agent of the U. S. Treasury Department. } No. 3,857.

To the honorable E. H. Durell, judge of said court:

The petition of said defendant respectfully shows, that he is aggrieved by a final judgment rendered against him in this cause, and is informed that there is error to his prejudice in said judg-
217 ment; that he is ordered by the Secretary of the Treasury of the United States, on behalf of the government thereof, to prosecute a writ of error in this case, with the object of having the decision of this court reviewed in the Supreme Court of the United States.

Wherefore he prays that a writ of error be allowed him, returnable to the first day of the next term of the Supreme Court, and that the same may operate as a supersedeas herein, without demanding the usual bond.

(Signed) SAM. H. TORREY,
U. S. Att'y.

(Signed) J. S. WHITAKER,
D. STUART,
Special Counsel.

Rule taken by defendant for writ of error.

Extract from the minutes of February 25th, 1868:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

On motion, S. H. Torry, district attorney, and Messrs.
218 Stuart and Whitaker, special counsel for the United States, and B. F. Flanders, defendant, it is ordered that plaintiff show cause on 26th instant, at 11 a. m., why the writ of error, heretofore sued out to the Supreme Court of the United States, should not be allowed without bond, obligation, or security on the grounds filed.

Circuit Court of the United States for the fifth judicial circuit and district of Louisiana.

Grounds.—Filed February 25th, 1868.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

On motion of S. H. Torrey, district attorney, and Messrs. Stuart & Whitaker, special counsel for the United States, and B. F. Flanders, defendant, it is ordered by the court that plaintiff show
219 cause on Wednesday, the 26th instant, at 11 o'clock a. m., why the writ of error heretofore sued out should not be allowed in this cause to the Supreme Court of the United States without bond, obligation, or security, for the reasons following, to wit:

1st. That said writ of error is asked by the directions of the Honorable Hugh McCulloch, Secretary of the Treasury of the United States.

2d. That the property forming the subject of this suit is claimed by the United States as property belonging to the government.

3d. That in this cause suit has been brought against an officer of the revenue of the United States, claiming property detained as belonging to the government; that the evidence shows that his action in the matter was taken under the direction of the Secretary of the Treasury, and that no execution can issue against said officer.

220 *Marshal's return on the foregoing.*

Received February 26th, 1868, and same day, month and year, immediately after receipt thereof, served a copy of the within rule and grounds on Sullivan, Billings and Hughes, esqs., the attorneys, named herein, by leaving the same at their office, No. 82 Custom-house street, in this city, in the hands of A. B. De Hughes, esq. one of said firm.

(Signed) H. FIELD,
D'y U. S. Marshal.

New Orleans, February 26th, 1868.

Order.—Continuance of rule.

Extract from minutes of February 26th, 1868:

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

The rule herein returnable this day was called up, and after
221 hearing counsel, ordered to be continued till Saturday, 29th instant, at 11 a. m.

Circuit Court of the United States district of Louisiana.

Note of evidence.—Filed February 29th, 1868.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

Plaintiff in rules offered in evidence telegrams 40 and 41.

Telegrams 40 and 41 offered in evidence, and filed February 39th, 1868.

Telegram 40, dated Washington, Jan'y 31st, 1868.
Received at N. O., Jan'y 31:
To U. S. District Attorney Torrey:

Appeal for government in suit of Tweed against Flanders, for one hundred and twenty-three (123) bales cotton in United States Circuit Court.

222 H. McCULLOCH.

Telegram 41, dated Washington, D. C., January 31st, '68.
Received at N. O., Janu'y 31st.
To J. S. Whitaker, 37 Camp st.:

Have telegraphed U. S. district attorney to appeal for government in case of Tweed against Flanders. See that it is done.

H. McCULLOCH.

Hearing and submission of rule.

Extract from minutes of February 29th, 1868:

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

The rule herein pending came up for trial. United States attorney and Stuart and Whitaker for plaintiff in rule. Sullivan, Billings & Hughes for defendant in rule.

When, after hearing argument, the court took time to con-
223 sider.

Order.—Rule made absolute.

Extract from the minutes of 2d of March, 1868:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

Ordered, that the rule taken by the United States and B. F. Flanders on the 25th ultimo be made absolute, and that the writ of error heretofore sued out in this case be granted as prayed for.

Circuit Court of the United States for the fifth judicial district of Louisiana.

Statement of facts.—Filed May 13th, 1868.

JOHN P. TWEED
vs.
B. F. FLANDERS, DEPUTY GENERAL Agent of the United States Treasury Department.

224 [*Statement of facts.*]

This suit was instituted to recover possession of one hundred and twenty-three (123) bales of cotton, which the plaintiff claimed to be unlawfully detained and withheld by the defendant. A writ of sequestration issued from this court, the property was bonded by and delivered to the plaintiff.

On filing stipulation waiving trial by a jury, and consenting to a trial of the issue by the judge, the case came on to be heard on the twenty-ninth day of January, eighteen hundred and sixty-eight, on the pleadings and evidence, and was argued by counsel. Thereupon the court finds the following as facts proved in the case:

In the months of February and March, eighteen hundred and sixty-six, the plaintiff purchased at Shreveport, Louisiana, from different owners, certain lots of cotton, in the aggregate four hundred and ninety-five bales. This cotton had been therefore seized by various agents of the Treasury Department on the claims
225 or charge that it was captured, abandoned, or confederate cotton, and was the property of the United States, and subject to forfeiture under the acts of Congress, and sent to the supervising special agent at Shreveport, S. G. Burbridge, to be there forwarded to the agency of the department of New Orleans.

The plaintiff purchased the property while it was thus in the hands of the treasury agent, and paid in coin seventy-five dollars per bale, the then market value of cotton, at Shreveport; it was shipped by the plaintiff from Shreveport to New Orleans, to his consignees, a part to Scott, Cage & Co., and the remainder to Weed & Company, subject to the order of O. H. Burbridge, special supervising agent of the Treasury Department at New Orleans, for adjudication, insured in the open policy of O. H. Burbridge, agent, and it was received by the consignees, who stored it. At the time of the purchase by the plaintiff, he held a contract made with the
226 Treasury Department to purchase and collect confederate cotton of a certain class and description, delivering it to the government, who were to reserve one-fourth and deliver to the plaintiff the remaining three-fourths. This contract is filed and makes a part of this record.

It appeared that the defendant, under color of the duties of his office as deputy general agent of the Treasury Department, claimed

Circuit Court of the United States district of Louisiana.

Note of evidence.—Filed February 29th, 1868.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

Plaintiff in rules offered in evidence telegrams 40 and 41.

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To J. S. Whitaker, 37 Camp st.:

Have telegraphed U. S. district attorney to appeal for government in case of Tweed against Flanders. See that it is done.

H. McCULLOCH.

Hearing and submission of rule.

Extract from minutes of February 29th, 1868:

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

The rule herein pending came up for trial. United States attorney and Stuart and Whitaker for plaintiff in rule. Sullivan, Billings & Hughes for defendant in rule.

When, after hearing argument, the court took time to con-
223 sider.

Order.—Rule made absolute.

Extract from the minutes of 2d of March, 1868:

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3,857.

Ordered, that the rule taken by the United States and B. F. Flanders on the 25th ultimo be made absolute, and that the writ of error heretofore sued out in this case be granted as prayed for.

Circuit Court of the United States for the fifth judicial circuit and district of Louisiana.

Statement of facts.—Filed May 13th, 1868.

JOHN P. TWEED
vs.
B. F. FLANDERS, DEPUTY GENERAL Agent of the United States Treasury Department.

224 [*Statement of facts.*]

This suit was instituted to recover possession of one hundred and twenty-three (123) bales of cotton, which the plaintiff claimed to be unlawfully detained and withheld by the defendant. A writ of sequestration issued from this court, the property was bonded by and delivered to the plaintiff.

On filing stipulation waiving trial by a jury, and consenting to a trial of the issue by the judge, the case came on to be heard on the twenty-ninth day of January, eighteen hundred and sixty-eight, on the pleadings and evidence, and was argued by counsel. Thereupon the court finds the following as facts proved in the case:

In the months of February and March, eighteen hundred and sixty-six, the plaintiff purchased at Shreveport, Louisiana, from different owners, certain lots of cotton, in the aggregate four hundred and ninety-five bales. This cotton had been therefore seized by various agents of the Treasury Department on the claims
225 or charge that it was captured, abandoned, or confederate cotton, and was the property of the United States, and subject to forfeiture under the acts of Congress, and sent to the supervising special agent at Shreveport, S. G. Burbridge, to be there forwarded to the agency of the department of New Orleans.

The plaintiff purchased the property while it was thus in the hands of the treasury agent, and paid in coin seventy-five dollars per bale, the then market value of cotton, at Shreveport; it was shipped by the plaintiff from Shreveport to New Orleans, to his consignees, a part to Scott, Cage & Co., and the remainder to Weed & Company, subject to the order of O. H. Burbridge, special supervising agent of the Treasury Department at New Orleans, for adjudication, insured in the open policy of O. H. Burbridge, agent, and it was received by the consignees, who stored it. At the time of the purchase by the plaintiff, he held a contract made with the
226 Treasury Department to purchase and collect confederate cotton of a certain class and description, delivering it to the government, who were to reserve one-fourth and deliver to the plaintiff the remaining three-fourths. This contract is filed and makes a part of this record.

It appeared that the defendant, under color of the duties of his office as deputy general agent of the Treasury Department, claimed

to hold one-fourth of the cotton so purchased by the plaintiff as the property of the United States; and under the orders and directions of the Secretary of the Treasury relinquished to the plaintiff the three-fourths of the cotton, and detained the one-fourth, (the one hundred and twenty-three bales) for the further orders or express adjudication by the secretary himself of the plaintiff's claim or right to it.

The plaintiff insisted that the property was not purchased under the contract, but that he was the owner, and entitled to relin-
227 quishment of the whole, and institutes this suit. It was further proved that the cotton had at no time been the property of the confederate government, and was not abandoned by the owners, and there appears to have been no just cause for its seizure by the treasury agent originally.

It was insisted on the part of the defendant, that the property was seized by the agent of the Treasury Department, appointed by the Executive Department pursuant to the act of Congress of March third, eighteen hundred and sixty-three, and the act of second of July, eighteen hundred and sixty-four, and the rules and regulations announced and promulgated for their government, and that while so under seizure was irrepleviable and the court had no jurisdiction. That the exclusive control of the subject matter was conferred on the Executive Department of the government by law.

The counsel for defendant further insisted that the plaintiff
228 was acting as an agent of the Treasury Department in the purchase and collection of the cotton under his contract, and that it was not competent for him to question the rights of the government, or assert an opposing interest to that of the United States, or to obtain an interest therein adverse to the government.

But the court, maintaining that it had jurisdiction to try and determine the suit, and that the cotton was not of the class of cotton referred to in the plaintiff's contract, and was therefore not purchased under the contract, nor as an agent for the government, and that he was authorized to purchase it under the circumstances, and that the suit was properly brought and the plaintiff entitled to recover, and entered judgment in his favor, to which rulings of the court the defendant then and there objected.

(Signed) E. H. DURELL, *Judge*.

229 Circuit Court of the United States for the district of Louisiana.

Judge's certificate.—Filed May 13th, 1868.

TWEED *vs.* FLANDERS. } No. 3,857.

In pursuance of the 8th section of the act of Congress, approved July 28th, 1866, extending the provisions of the 2nd, 3d and 4th sections of the act of March 2nd, 1833, and of the 12th section of

the act of March 3d, 1863, to cases arising against any officer of the United States by reason of any act done under authority or color of the act of March 12th, 1863, or the act of July 2nd, 1864, provided that such acts done, or proceedings had, under the two last acts aforesaid, or under color thereof, shall have been done and had under the authority or by the direction of the executive government of the United States.

The undersigned certifies in this suit, wherein on the 29th day of January, 1868, the plaintiff, by the final judgment of this
230 court, recovered the possession of 123 bales of cotton, with his costs of suit, which are taxed at the sum of four hundred and seventy-three 66-100 dollars; that defendant acted under the directions of the Secretary of the Treasury.

(Signed) E. H. DURELL, *Judge.*

231 Circuit Court of the United States, fifth circuit and district of Louisiana.

UNITED STATES OF AMERICA:

CLERK'S OFFICE.

I, Dominick Urban, clerk of the Circuit Court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 230 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of John P. Tweed, vs. Benj. F. Flanders, sup'g spec. ag't of the U. S. T. D.. No. 3,857 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court at the city of New Orleans, this 24th day of August, A. D. 1868.

[SEAL.] D. URBAN, *Clerk.*

[5-cent. rev. stamp, cancelled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the Circuit Court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 24th day of August, A. D. 1868.

E. H. DURELL, *Judge.*

[5-cent. rev. stamp, cancelled.]

232 UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the judges of the Circuit Court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and preceedings, as also in the rendition of

the judgment of a plea which is in the said Circuit Court before you or one of you, between John P. Tweed, as plaintiff, and Benjamin F. Flanders, deputy general agent of the U. S. Treasury Department, as defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 21st of February, in the year of our Lord one thousand eight hundred and sixty-eight.

D. URBAN,
Clerk of the United States Circuit Court
for district of Louisiana.

Endorsed: United States Circuit Court. No. 3,857. John P. Tweed vs Benjamin F. Flanders, deputy general agent of the U. S. Treas. Dept. Writ of error. Filed February 21, 1868. F. B. Vinot, d'y cl'k.

233 THE UNITED STATES OF AMERICA, *District of Louisiana*:

The President of the United States to John P. Tweed, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the fifth circuit, and district of Louisiana, wherein Benjamin F. Flanders, deputy general agent of the U. S. Treasury Department, is plaintiff in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this third day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

E. H. DURELL, *Judge.*

Endorsed: United States Circuit Court. No. 3,857. John P. Tweed vs. Benj. F. Flanders, dep'y gen'l ag't of the U. S. Treas'y Dep't. Citation in error.

Marshal's Return.

Received Mar. 4, 1868, by the United States marshal, and on 5th day of Mch. '68, served copy of within citation in error on Jno. P. Tweed, named herein, in the hands of E. C. Billings, his att'y, plly, at office 82 Custom-house street, in this city.

New Orleans, M'ch 6, '68.

S. W. REED,
D'y U. S. Marshal.

Supreme Court of the United States

DECEMBER TERM, 1879.

No. 108

BENJAMIN F. FLANDERS,

Deputy General Agent, &c.

vs.

JOHN F. TWEED.

Error to the Circuit Court of the United States for the District of Louisiana.

T. D. LINCOLN,

Of Counsel for Defendants in Error.

Robert Clarke & Co., Printers, 65 West Fourth [illegible] Cincinnati.

Supreme Court of the United States

DECEMBER TERM, 1869.

BENJAMIN F. FLANDERS,

Deputy General Agent, etc.

v.

JOHN P. TWEED.

Error to the Circuit Court of the United States for the District of Louisiana.

THIS suit was brought by Tweed, the defendant in error, to recover the possession of 123 bales of cotton, owned by him, and wrongfully detained by Flanders, the plaintiff in error.

That Tweed purchased the property and paid for it is not denied; that it was his, and that he has the rights granted him by the judgment of the circuit court, will be

admitted, unless there is something shown in the record why he should not have had the judgment he did have.

The question is, whether there is anything in this record to show that the court erred in giving him judgment for possession of the property and a discharge of the bond?

It is difficult to tell what questions are intended to be raised by this record, or are in fact raised thereby, as there is no bill of exceptions, nor any assignment of errors, nor any briefs, on file, pointing out any error committed by the circuit court.

The defense was, that Flanders had a right to the possession of this cotton as an agent of the Treasury Department, the same having been purchased by Tweed, under a contract between him and one Burbridge, a Treasury Agent, under the law relating to captured and abandoned property; and that it could not be replevied by Tweed from the defendant, Flanders. The record does not show what Flanders' office in fact was. In the petition he is styled Deputy General Agent of the United States Treasury Department, and a citizen of Louisiana; and Tweed is stated to be a citizen of Ohio. In the writ the defendant is spoken of as Supervising Special Agent of the United States Treasury Department. In a motion to set aside the writ of sequestration, Flanders alleged that he was in possession of the cotton by virtue of a contract between the Secretary of the Treasury and the said Tweed, in regard to cotton formerly belonging to the Confederate Government (Record, p. 8), and it is upon that ground that the defense proceeded. But under what law, or in what service, the contract was made, does not appear. The defendant, Flanders, filed exceptions to the petition, and in those he calls

himself Deputy General Agent of the Treasury Department. He therein also sets up that the property was captured property, and that as such he held possession and custody of it as legal keeper for the use and benefit of the United States, the same having been turned over to the agents of the Treasury Department by the officers of the United States Army, with the knowledge and consent of the plaintiff, Tweed, who was a contractor with and *quasi* officer of the Government; that the property was *de facto* captured property under the statutes of the United States; should be sold and the proceeds paid into the Treasury, there to await the action of the court of claims; that the property was irrepleviable, and that the court had no jurisdiction. (Record, pp. 12, 13.)

By this it would seem he was a special agent under the laws relating to captured and abandoned property, though it is not so directly alleged.

In his answer, filed with his exceptions, he styles himself Deputy General Agent of the Treasury Department of the United States, denies the plaintiff's ownership, and claims to hold possession in his capacity of Treasury Agent, under a contract made by the plaintiff, Tweed, with the Treasury Department in relation to cotton known as Confederate States' cotton, captured in war, and turned over to the Treasury Department by the officers of the United States army. (Record, pp. 13, 14.)

Tweed denies that the cotton was ever the property of the Confederate Government, or that it was captured or abandoned property, or that he purchased it under a contract with the Treasury Department or as *quasi* agent of the Government, or that the defendant held it as an officer

admitted, unless there is something shown in the record why he should not have had the judgment he did have.

The question is, whether there is anything in this record to show that the court erred in giving him judgment for possession of the property and a discharge of the bond?

It is difficult to tell what questions are intended to be raised by this record, or are in fact raised thereby, as there is no bill of exceptions, nor any assignment of errors, nor any briefs, on file, pointing out any error committed by the circuit court.

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of the Government of the United States; and I think the record most clearly shows that the cotton never belonged to the Confederate Government; that it was not captured or abandoned property; that Tweed did not purchase it under any contract with the Treasury Department, or with any one in any way for the Government, and that it was in fact his property. It shows, indeed, that before he purchased it, he inquired of the officers of the Government about it, and was informed that the Government had no claim upon it; and that he purchased and paid a full price for it in good faith under the law. *See the evidence of Gen. S. G. Burbridge, Assistant Supervising Special Agent of the Treasury Department* (Record, p. 26); *Tweed's evidence* (Record, pp. 38, 39, 40); *the evidence of Benj. H. Epperson* (Record, pp. 43, 44, 45); *and the evidence of Chas. E. Goodwin* (Record, pp. 45, 46, 47).

The question was one of fact, which was submitted to the court, and found for the plaintiff. It does not appear that the whole evidence is before the court, and there are no instructions asked and refused; no demurrer overruled; nor any bill of exceptions raising any question of law; but the cause having been submitted to the court by the parties, the court made a special finding, in which it found that the cotton at no time had been the property of the Confederate Government, was not abandoned by the owners, and that there did not appear to have been any just cause for its seizure by the Treasury agents; that the cotton was not of the class of cotton referred to in Tweed's contract, and was not purchased under it, nor as an agent of the Government, and that under the circumstances of the case he was authorized to purchase it. (Record, pp. 83, 84.)

This special finding is conclusive, and can not be inquired into in this Court. (*Bond* v. *Brown*, 12 How. 255, 256; *The United States* v. *King*, 7 How. 844; *Parks* v. *Turner*, 12 How. 44.) The case, therefore, presents nothing but questions of law arising upon the finding.

In order to understand this special finding of the court, it becomes necessary to state some further facts.

On the 23d day of January, 1866, the agreement referred to in the answer and in the special finding, was entered into between the plaintiff, Tweed, and O. H. Burbridge, Supervising Agent of the Third Agency of the Treasury Department. This contract appears twice in the printed record; first on p. 21, and second on pp. 41, 42. The copy on p. 21 is not correct, and is not the one proved. The real contract is on pp. 41, 42, as the record shows.

This contract set out that it was represented that there were large amounts of cotton belonging to the so-called Confederate States, uncollected, near the Red and Ouachita rivers, in the possession of persons claiming to be the owners, and the marks of which had been erased, making the identification difficult, if not impossible; and that the best way to obtain it was to make arrangements with the holders for them to release their claims and co-operate with the Government in sending it forward. It was thereby agreed that Tweed should furnish the money to purchase so much of such cotton as could be purchased and transported to New Orleans, and there delivered to said Burbridge, in good order, at not to exceed three-fourths its price, and send it forward; and that Burbridge should deliver to the said Tweed three-fourths of said cotton for his services, free of all expenses and taxes, "which three-fourths so paid and delivered to him should be regarded as a sale to him by the

United States, and should not be subject to the payment of the internal revenue, or if held subject to payment of the same, to be paid by the said Burbridge."

It was also provided that the agreement was to be promptly submitted to the Secretary of the Treasury, by said Burbridge, for his approval, "and if not approved it was to be thereby terminated," and if it should be approved it was at all times subject to termination by the Secretary of the Treasury, or by his direction. (Record, p. 42.)

It was under this agreement that Flanders claimed to hold the cotton in question, and upon which the defense finally rested. This is found in the statement of facts.

There are several reasons why this contract gave no such right to the said Flanders.

First. It is, to say the least of it, exceedingly doubtful whether, either with or without the authority of the Secretary of the Treasury, O. H. Burbridge, as supervising special agent, had any authority to make this contract.

The 8th section of the act of July 2, 1864, authorized the purchase of cotton in the insurrectionary states, by agents authorized by the Secretary of the Treasury, at prices not to exceed the market price at the place of delivery, nor exceeding three-fourths the market value thereof in the city of New York, at the latest quotations known to the purchasing agent. This contract provides that the purchase be made at cost not exceeding three-fourths of its value, but said nothing of the time and place of fixing that value. It does not conform to the law.

Second. There is no evidence in this record that this contract was ever approved by the Secretary of the Treasury,

as required by its terms, unless it may be implied from the facts that the Secretary notified Tweed that it was annulled before he purchased the cotton in question; and, surely, it can not be implied from this. The Secretary seems to have known only its general features, and never to have seen it. (Record, p. 21.)

THIRD. But if ever approved, it was canceled before the purchase in question, and the cotton was not purchased under it. (Record, pp. 26, 84.)

FOURTH. Nor was the cotton of the character provided for in the contract. It is clear that it was not property which ever belonged to the Confederate States. This appears all the way through the record, and is specially found by the court. It is shown by General Burbridge that Tweed was told by him that the cotton was private cotton, and did not fall within the terms of the contract, and that Tweed did not purchase it under the contract, and that the defendant knew this fact. (Record, pp. 26, 84.)

The defense then specially set up by the defendant, to-wit: that this cotton was purchased by Tweed under the said contract, and as *quasi* agent of the Government, wholly failed.

(See the answer of the defendant, Record, pp. 13, 14.)

The fact is, that the Government officers demanded the internal revenue tax of Tweed, and he paid it, and now has the Government receipts for it. Under this contract he was not to pay any internal revenue tax upon any property purchased under it.

II.

The above considerations are sufficient to dispose of the case. But as the defendant also denied Tweed's ownership of the cotton, and at one time claimed that it was captured or abandoned property; that it was irrepleviable, and that the court had no jurisdiction of the cause; and inasmuch as I am totally ignorant of the ground upon which it is claimed that there is error in the judgment, I will add some further remarks upon the case, premising, however, that I do not see how this Court can upon this record go into these questions.

First. As to the ownership of the cotton. It is specially found that Tweed purchased it, and paid therefor the market value of it at the time.

It will also be borne in mind that this purchase was made in March, 1866, and after his contract was annulled. At that time the commercial non-intercourse created by the proclamation of Mr. Lincoln, of the 16th of August, 1861 (under the act of July 13, 1861), no longer existed, and all the rules and regulations restricting trade in any part of Louisiana had been repealed. (See Proclamation of June 24, 1865; 13 Statutes at Large, p. 769.)

By this proclamation the whole system of special agency appointed under the captured and abandoned property laws was abolished, and any captured or abandoned property was to be turned over thereafter to the regularly appointed officers of the customs. Neither Burbridge nor Flanders

was such officer. There is an exception in this proclamation as to property theretofore purchased by the agents of the Treasury Department, or such as was captured by, or surrendered to, the forces of the United States.

But the property must have been, in fact, previously purchased by the agents of the United States, or captured by, or surrendered to, the forces of the United States. There is no proof that this property was of that character in the record, but the contrary, and it is found by the Court that it was not: so that Tweed had a right to purchase it, unless the fact that it was in the hands of the Treasury Agents under a claim that it was captured or forfeited property, prevented such purchase.

Now the whole power of these agents was to collect abandoned and captured property, and such property as was forfeited under the act of July 13, 1861, and July 17, 1862. This, however, is given under the act of March 12, 1863, and the act of July 2, 1864, relating to captured and abandoned property.

It is very clear that these officers had no authority to take property which was not of the character set out in these acts. It must, in fact, be captured or abandoned or forfeited under the act of July 13, 1861, or the act of July 17, 1862.

It is, perhaps, enough to say that the Court has found that this property was not of this character. (Record, p. 84.)

Neither captured nor abandoned property is defined by the act of March 12, 1863; but on the 3d day of July, 1863, the Secretary of the Treasury addressed a letter to William P. Mellen, Supervising Special Agent of the Treasury Department, in relation to the duties of the special agents, under that act, the 6th section of which required the officers

and privates of the army or navy who should receive any such property to turn it over to such agents. That letter was issued as a Treasury Department Circular in July, 1863, and sent to the supervising special agents "for the convenient information of all parties concerned." In that letter, abandoned property is thus described:

"Abandoned property is of two descriptions: 1st. That which has been deserted by the owners: 2d. that which has been voluntarily abandoned by them to the civil or military authorities of the United States."

It was only property found abandoned by the owners or that was voluntarily abandoned to them, which these agents could collect and sell.

Captured property is thus described:

"Captured property is understood to be that which has been seized or taken from hostile possession, by the military or naval forces of the United States."

All property so turned over was to be regarded as *prima facie* captured property.

This species of property was only to be received by these agents from the military or naval forces, for the reason that any effort on the part of these agents to obtain such property would embarrass the military operations, and be wholly futile. This property they were to regard only as *prima facie* captured. Property forfeited under the act of July 17, 1862, is thus described:

"Confiscable property is that which belongs to certain classes of persons as recited in the confiscation act of July 17, 1862, and is liable to seizure and condemnation by judicial proceedings in the manner prescribed by that act."

This class of property these agents had nothing to do with (as the circular shows) until after the act of July 2, 1864, and then only after seizure under judicial process, when the same was turned over to them for sale. The condition of things would have been bad enough, if every one of these agents could, on his own motion and without process, take any man's property in the South from his possession under some of the sections of the act of July 17, 1862.

What was called "commercial property" in this circular, was property forfeited under the non-intercourse act of July 13, 1861, by the 9th section of which, such property was to be proceeded against in the courts of the United States. With this species of property these agents had nothing to do, until after the act of July 2, 1864, and until the same was turned over to them by the officers seizing the same.

The act of July 2, 1864, extended the species of property known as captured and abandoned property, to houses, lands and tenements, and the charge of the temporary leasing of the same was imposed upon these agents. It also somewhat extended the character of abandoned property. This act provided that

> "Property, real or personal, shall be regarded as abandoned when the lawful owner thereof shall be voluntarily absent therefrom, and engaged, either in arms or otherwise, in aiding or encouraging the rebellion." (See secs. 2 and 4.)

If this is not to be regarded as extending the property of this character to enemies (the object of the act of March 12, 1863, being intended for the friends of the Government), then this definition is restrictive of that given by Mr. Secretary Chase in the circular letter aforesaid.

The 3rd section of this act authorized these agents to receive property captured by the military and naval forces; also, property seized under judicial process, under the act of July 13, 1861, called "commercial property" in this circular letter; and property seized by process of court under the act of July 17, 1862, and called in this circular letter "confiscable property."

The act of March 12, 1863, was largely dictated by friendly motives toward non-combatants at the South, who felt friendly toward the General Government. The same is true to a certain extent of the act of July 2, 1864, and the system of rules and regulations by which these acts were to be carried out. They proceeded upon the idea that there were persons in the South who were friendly to the United States Government, but who on account of the disturbed condition of the country might be compelled to abandon their property, or who were not able to protect the same, and might therefore desire to turn it over to the United States, and afterward receive the net proceeds. None of these acts proceed upon the idea that these agents had any right to seize any property which was not thus abandoned and in danger of being lost or destroyed; or which was not turned over to them by the civil or military officers of the Government. They therefore give no countenance to the idea that simply because these agents have taken possession of the property as captured or abandoned, or have it in their possession claiming it as such, or as claiming that it was subject to the operation of any one of these laws, that that fact alone prevented the real owner from replevying it, if the property was not in fact of the character named in these laws. The circular letter before named, provides that

"All property taken possession of by military or naval forces, and turned over to special agents, must be regarded as *prima facie* captured property."

This was an instruction to these agents, and for their general government; and it only provides that property turned over to them by the military or naval forces as captured property must be regarded by them as *prima facie* captured property.

But it is a well known fact that Secretaries Chase, Fessenden and McCullough did each of them release property, and the proceeds of property, received by these agents as captured or abandoned property, upon being satisfied that it was not of that character. This could only have been on the ground that these officers had no authority to receive or sell any property which was not in fact captured or abandoned; for neither the act of March 12, 1863, nor the act of July 2, 1864, gave the Secretary of the Treasury any discretion to release or discharge any property received by such agent, or the proceeds of any, which was in fact captured or abandoned. On the contrary, the acts required it to be sold and the proceeds paid into the Treasury, and gave the loyal owner a right to the proceeds of any "*such property*" (captured or abandoned property), by a judgment of the court of claims. See sec. 3, act of March 12, 1863. And the act of July 28, 1866, 14 Statutes at Large, 329, and the act of July 27, 1868, 15 Statutes at Large, 243, 244, show that up to the time of July 28, 1866, there was no law making property in the hands of these agents irrepleviable. This was some three months after the time when the court permitted Tweed to replevy the property in question.

Nor was there any law until July 27, 1868, which made

the fact that these agents were acting under the said laws, or under color thereof, or under the direction of the Secretary of the Treasury—a defense to an action brought against such agent for having wrongfully seized or taken possession of such property. This act was passed some six months after judgment in this case, and does not apply to the case, for this suit had passed into judgment and was no longer pending.

There was no pretense in the proof that the property was in fact abandoned property under any of these definitions, or that it was ever captured by our forces, or forfeited under either of the laws aforesaid, or that it ever belonged to the Confederate Government. And the simple fact that these Treasury agents had taken possession of it as such, or held it as such, or held it because they claimed it under the contract with Tweed, would not protect them in such possession, nor would it prevent any one from purchasing it from the real owners. The court has expressly found that the cotton in question had at no time been the property of the Confederate Government, and was not abandoned by the owners; and that there appeared to have been no just cause for its seizure by the Treasury Agents originally.

In reference to this matter, the Court will note that though the defendant claimed at one time that the property in question was turned over to the Treasury Agents by the officers of the United States Army (Record, p. 13), yet that the statement of facts shows that not to be true, but that the property was taken possession of by these agents as captured or abandoned, or Confederate cotton, and as the property of the United States, subject to forfeiture under the acts of Congress; and this was, in fact, in direct violation of

NOTE.—In this connection I desire to call the attention of the Court to the Circular of the Secretary of the Treasury of the 27th of June, 1865, to be found printed by the Government Printing Office in 1868, in a small volume entitled "ACTS OF CONGRESS AND RULES AND REGULATIONS PRESCRIBED BY THE SECRETARY OF THE TREASURY IN PURSUANCE THERETO," &c., &c., pp. 98, 99.

This Circular contains 7 rules prescribed by the then SECRETARY, Mr. MCCULLOCH. The first of these rules declared that "all restrictions on commercial intercourse were removed; the 2d declared that the subordinate officers, discharging the duties as to commercial intercourse, would consider their connection with the department at an end on the 30th of that month; the 3d provided that agents for the purchase of products should close their business with the department on the 24th, and return products purchased," &c., &c.

The following is a part of the 4th Regulation:

"Officers of this department charged with the duty of receiving and collecting, or having in their possession, or under their control, captured or abandoned or confiscable personal property, will dispose of the same in accordance with regulations heretofore prescribed, at the earliest time consistent with the public interest, and *will refrain from receiving such from military or naval authorities after the* 30*th instant.* This will not be construed, however, as interfering with the operations of the agents *now* engaged in receiving or collecting the property recently captured by or surrendered to the forces of the United States military or Treasury authorities by rebel military officers or cotton agents."

Now look at the decision in this case. A subordinate Treasury agent of the United States, by the name of Turnbull, had issued an order that all parties having cotton stored at Jefferson should, by a certain time, file an affidavit in his office, showing the purchase of the cotton by them, and that it had not been disposed of to the Confederate government. (*Record, pp.* 43 *and* 44.) This was a pretty sweeping command to come from one of these subordinate agents. The producer and owner of the cotton in question did not receive this monition, and did not file the affidavit; and for this failure Turnbull seized the cotton and sent it from Jefferson to Shreveport, a town on the same river, about thirty miles below. By what law was this agent authorized to make this seizure? It was, in fact, done several months after the Treasury circular aforesaid had been issued, and there is nothing in the record to show the contrary. Again, I ask, what pretence or color of authority had he thus to act? For the purpose of the laws in question these districts were no longer insurrectionary, and there is nothing in the record showing that that property had been before that time captured from the Confederate government, or surrendered by it, but the contrary is expressly found in the statement of facts.

the Treasury Circular before referred to. The agents had, in fact, seized it upon a general suspicion against the people living in that country, and never had any specific charge against it, and such seizure was in violation of the instructions under which they were acting.

SECOND. That these Treasury Agents had no authority to seize any cotton, but such as in fact was captured or abandoned, will further appear by a reference to the third section of the act of March 12, 1863 (12th Statutes at Large, 820). That section gives the loyal owner a right to recover the proceeds of "such abandoned or captured property."

The plaintiff, before he could recover these proceeds, had to declare that the property was captured or abandoned and swear to his petition. 12 Statutes at Large, 767. The Court of Claims had no jurisdiction of any other. His suit would then proceed upon a ground that would be a defense to the party taking it, as such, because it must have been captured or abandoned, or he would have had no authority to gather or receive it.

That these acts for the collection of captured and abandoned property, had their origin in a friendly feeling toward those loyal persons in the insurrectionary states, who from the disturbed condition of things about them, could not protect their property, and were therefore compelled to leave or abandon it, or turn it over to the United States, and in the disposition on the part of the United States, to collect and preserve for them that which might otherwise be destroyed, will appear from a further consideration of these acts. The government could not give them the protection which was due to their loyalty. It might preserve to them the proceeds of the property they were compelled to abandon. These laws did not intend to authorize the Treasury Agents to interfere generally with the property of the people of the South. The

act of March 12, 1863, authorized the appointment of agents to collect captured or abandoned property, have it sold, and have the proceeds preserved for such owners, so far as they were loyal. This appears by section 1 of the act of March 2, 1863. It was also feared that the officers and soldiers might get this property to the injury of the owner, and the demoralization of the armies, and therefore the 6th section of the same act provided that all the officers and privates of the army or navy, who should "take or receive any such abandoned property," should turn it over to the agents appointed by the Secretary of the Treasury.

The second section of the act of July 2, 1864, is of similar character, and shows the same spirit; for it authorized these agents "to take charge of, and lease for periods not exceeding twelve months, the abandoned houses, lands, and tenements within the district." And the circular letter before named, provided for the collection and preservation on the premises of furniture, etc. The act further provides that

> "property, real or personal, shall be regarded as abandoned, when the lawful owner thereof shall be voluntarily absent therefrom, and engaged either in arms or otherwise in aiding or encouraging the rebellion."

Here were abandoned houses and lands that were to be taken possession of, and leased, provided the parties were thus engaged. But unless the owners were voluntarily absent therefrom, these agents had no authority to take any such possession.

Nor would possession of any other property than property thus situated, bring it under the operation of those laws, or entitle them to the protection subsequently provided by the act of July 27, 1868. They would simply be trespassers or wrong-doers, and therefore it was that the

several Secretaries of the Treasury released such property or its proceeds whenever they were satisfied that it was not in fact such as came under these laws.

An officer with a process against A takes B into cus-custody, supposing him to be A. The officer is guilty of false imprisonment.

He has process authorizing him to levy upon or attach the property of A. He finds property in A's possession which he supposes, and has reason to believe, is in fact A's. He levies upon or attaches it, and it turns out, on investigation, to be B's. The officer is a trespasser.

Walcot v. *Pomeroy*, 2 Pick. 122.
Jameson v. *Hendricks*, 2 Blackf. 95.
Commonwealth v. *Kennard*, 8 Pick. 135.

A revenue officer is authorized to seize property for the non-payment of the proper duty imposed upon it. He seizes it, and demands the duty which he believes it should be charged with. After, perhaps, a long and critical examination in court, it turns out that the property was subject to no tax, or to a less tax. Now, irrespective of any statute to that effect, such revenue officer is liable individually though he may have paid the money into the treasury.

McLane v. *The United States*, 6 Pets. 426.
Elliott v. *Swartwout*, 10 Pets. 157.

See also—

Johnson v. *The United States*, 5 Mas. 441.
The Margaretta Hays, 2 Gal. 518, 519.
The United States v. *Lyman*, 1 Mas. 495.

And the Secretary of the Treasury was authorized to

appoint agents to collect abandoned property, and to receive and sell property captured and forfeited, and turned over to them by the army and navy, and officers authorized to seize it, as captured or forfeited. They take property not thus abandoned or captured or forfeited. They act beyond and without the authority of law. They act at their peril, and irrespective of any statute protecting them, they are wrong-doers, and liable as such. And until the acts of July 28, 1866, and of July 27, 1868, this was the condition of the agents of the Treasury Department acting under the laws relating to captured and abandoned property and property subject to forfeiture under the acts of July 13, 1861, and July 17, 1862. They were not even officers, so-called, but were agents simply, and had no authority as such except as they derived it from the acts referred to.

It can not for one minute be supposed that the United States intended to protect these agents in taking possession, by any and every means, of property in that country, as captured and abandoned or forfeited property, and holding it under these laws.

The possession, therefore, of this property by such agents, especially when they knew that the United States had no claim against it, as in this case, could not prevent Mr. Tweed from buying and recovering the same.

Any other rule would lead to this, that any property which these officers had thus taken must be sold and the proceeds paid into the Treasury. If captured or abandoned, the Secretary of the Treasury had no authority to release it, but he must have it sold and the proceeds paid into the Treasury; and it would trouble any lawyer to find how these proceeds could be got out, unless the claimant should set up and swear that they were the proceeds of captured and abandoned property. In a case like this he

could not do that, for the property was not of that character. (See sections 1st and 3d of the act of March 12, 1863, 12 Statutes at Large, 820.) The Secretary of the Treasury had no authority to return any property, or the proceeds thereof, which these agents had any right to take; nor could the Court of Claims adjudicate upon any other.

I know that the act of July 27, 1868 (15 Statutes at Large, 243, 244), passed some six months after the judgment entered in this case, declared the true intent and meaning of the act of March 12, 1863, to have been that "the remedy given in cases of seizure made under the said act, by preferring a claim in the court of claims, should be exclusive, precluding the owner of any property taken by agents of the Treasury Department, as abandoned or captured property, in virtue of or under color of said act, from suit at common law, or any other mode of redress whatever, before any court or tribunal other than said Court of Claims."

It then proceeds to provide that in all suits then pending or thereafter brought, the agent sued might set up that he acted by virtue of or under color of those acts.

So far as this act provides for future cases, it is valid as a law; but so far as it sets out what was the true intent and meaning of the act *as to any past transaction*, it is wholly invalid, and of not the slightest weight or importance. What was the true intent and meaning of that act was purely a legal question, over which Congress had no power.

Schooner Aurora Borealis v. *Dobbie*, 17 Ohio R. 127, 128.
De Chastellux v. *Fairchild*, 15 Penn. St. R. 20.
Merrill v. *Sherburn*, 1 N. Hamp. 203. 204.
Sandborn v. *Com. Rice Co.*, 9 Minn. 279.
Lewis v. *Webb*, 3 Greenlf. R. 333.
Holden v. *Janes*, 11 Mass. 402.

It is not the fair construction of the act of March 12, 1863, and it was probable that the first part of the section was instigated by some one against whom a judgment had been obtained, and whose case was in this Court. As a law applied to a subsequent case, it would not be declared invalid. It is the law of one Congress setting forth what was the true intent and meaning of a law passed by a prior Congress. It is so clear that Congress had no authority to pass this part of the section, applying to a past transaction, that so far as it applies to this case, it is not entitled to the ordinary respect paid to an act of Congress.

I would here say, in closing this point, that Mr. Tweed was not acting in opposition to the Government in making these purchases, nor was he a disloyal speculator, but an upright and honorable merchant, who has long been known to the Chief Justice of this Court. He had furnished money in good faith, to purchase under the contract between Mr. Burbridge and himself; but finding, when he got to Shreveport, that his contract was not approved, or was terminated by the Secretary of the Treasury, and learning from the officers who had possession of this cotton, that there was no claim against it by the United States, and that there was no reason why he should not purchase it, he bought it and paid for it, not under his contract but as a commercial transaction on his own account. (See Gen. Burbridge's evidence, Record, p. 26, and Tweed's evidence, Record, p. 39, and statement of facts, p. 84.)

THIRD. This property was not such that it could not be replevied or sequestered.

This suit was commenced on the 21st of April, 1866. The defendant was not at the time an officer acting under authority, or color of any *revenue law*, in the sense intended

in the second and third sections of the Act of March 2, 1833, (4 Statutes at Large, 633), and those sections can not, therefore, apply to this property. For the same reason, the 12th section of the act of March 3, 1863 (12 Statutes at Large, 741), does not apply. That relates to suits or proceedings against collectors, or other officers of the revenue.

This property was replevied by order or permission of the Court, on the 15th of May, 1866 (Record, p. 27–30), and proper bond given. The record shows no exception taken to this act of the Court.

This was some months before the passage of the act of July 28, 1866.

Before the passage of that act, the plaintiff had in fact taken the property under the order of the Court; and the only question which then remained for inquiry, was as to the real ownership of the property, and whether the plaintiff was bound to restore it, or satisfy such judgment as might be rendered in the suit; or, rather, whether it was purchased under the contract of January 24, 1866, between Tweed and Burbridge, and which had been annulled. It was by virtue of this contract that the defendant claimed the right to hold this property. Unless it fell under this agreement, it is clear that Tweed owned it. He had paid a full price for it, and at a time when all restrictions upon commercial intercourse had been removed, and this system of agents under the captured and abandoned laws done away with by the Proclamation of the President, of June 24, 1865 (13 Statutes at Large, 769.)

As the property was his, and as there was no just ground for its seizure or detention at the time the court permitted him to replevy it, there was no judgment which the court could render against him upon the bond.

This act created no defense for the defendant below. It gives such officer the benefit of the 12th section of the act of March 3, 1863, which provides, that if a recovery is had, against such officer, for an act done by virtue of the law, if the court shall certify that there was probable cause for such act done by the officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, that no execution should issue, but that the amount should be paid out of the proper appropriation from the Treasury. This act of July 27, 1866, therefore, created no defense to the judgment. There is no such certificate in the record. It does not appear that any was asked for, or claimed to be proper, or that the court erred therein. It was a matter to be provided for by that court. But no question can arise in reference thereto now, as no execution has been issued.

The Act of July 27, 1868 (15 Statutes at Large, 243), does authorize such officer to plead in bar that the act complained of was done by virtue of, or under color of the laws for the collection of captured or abandoned property; and if supported by proof, the same should be a bar to the action. This is the first time any such rule was applied to the officers acting under these laws. But this act was not passed until some six months after judgment was entered in this suit. The act only relates to suits then pending and thereafter brought. It can not therefore apply to this case.

Fourth. It was also claimed that the circuit court had no jurisdiction of the case, but that the court of claims had such jurisdiction. (Record, p. 13.)

As the plaintiff's suit proceeded upon the idea that the

property was neither captured nor abandoned, the court of claims had no jurisdiction thereof, for it is only of the proceeds of such property that that court can take cognizance.

The plaintiff was a citizen of Ohio, and the defendant was a citizen of Louisiana; and the question to be tried involved no forfeiture of the property, but the right of property and possession.

The plaintiff claimed that the defendant detained his property wrongfully, without right or authority, as it was not captured or abandoned, or forfeited, and that they had no authority by law to detain it: that he was in fact a wrongdoer. *McLane* v. *The United States*, 6 Pets. 426; *Elliott* v. *Swartwout*, 10 Pets. 137; *Mitchell* v. *Harmony*, 13 How. 134; *Commonwealth* v. *Kennard*, 8 Pick, 135. Under these circumstances the court had jurisdiction.

If there were any question about this, it would be set at rest by the 8th section of the act of July 28, 1866, which extends the provisions of the 2d section of the act of March 2, 1833, to all cases theretofore brought, and *then pending*, under the acts in question. This 8th section is found in the 14 Statutes at Large, 329. The second section of the act of March 2d, 1833, provided, "that the jurisdiction of the circuit court of the United States shall extend to all cases in law, or in equity, arising under the revenue laws of the United States, for which other provisions are not made by law."

Now, there is no provision by law made in relation to any suit under the captured and abandoned property acts, except that relating to a suit by a loyal owner to recover the proceeds of property actually captured or abandoned, and the proceeds of which have been paid into the Treasury. He can get such proceeds by showing that he never gave

any aid or encouragement to the rebellion; but he must allege the property to have been captured or abandoned, for it was none other that these Treasury Agents had a right to collect and sell, and it was only of "such captured and abandoned property" the proceeds of which that court had any jurisdiction.

This suit is not of that character, and the circuit court of the United States is the only court that has jurisdiction; as it comes within the provisions of the act, and was pending at the time the act was passed.

And it was this court that permitted Tweed to replevy the property some two months before this second section of of the act of March 2, 1833, was applied to these statutes relating to captured and abandoned property.

FIFTH. I have stated that there are no exceptions in the record, nor any bill of exceptions. This is not strictly accurate. What I mean is, that there are no exceptions that reach these questions. There is what is called a peremptory exception on pages 12 and 13, which is in the nature of a plea to the jurisdiction of the Court. "With this peremptory exception" the answer putting in issue Mr. Tweed's title, is filed, and also setting up the main fact found in this peremptory exception.

So far as this was a plea to the jurisdiction of the Court based upon the want of proper parties, or because the defendants were entitled to some special exemption, it is waived by the filing an answer putting the case made in issue.

Sheppard v. *Graves*, 14 How., 509.
Marsh v. *Brooks*, 14 How., 573.
The Abby, 1 Mas., 363–364.

So far as it intended to raise the question that the

Court had no jurisdiction of the subject matter, that needed no plea to the jurisdiction, for if that plainly appears upon the record, I suppose the Court would take cognizance of it at any time.

Wood v. *Mann*, 1 Sum., 580.
Jackson v. *Ashton*, 8 Pets., 149.
Corporation N. O. v. *Winter*, 1 Wheat. 94.

There does not seem to have been any special overruling this plea, except in the final judgment; and though objection is entered to the ruling of the Court, no exception is taken thereto, and this objection is general and not special, and therefore is not good as an exception unless good to all the rulings of the Court.

Hart v. *R. and S. R. R. Co.*, 4 Seld., 43–44.
Jones v. *Osgood*, 2 Seld., 236.
Johnson v. *Jones*, 1 Black., 220.
Rogers v. *Marshall*, 1 Wall., 654.
Harvey v. *Tyler*, 2 Wall., 338.
38 *Rule of this Court.*

It is not, in fact, an exception, though possibly it may be so treated.

The other exception is found on pages 73 and 78 in the record. This is a peremptory exception, taken after judgment, to the plaintiff's right to stand in judgment in the cause, for the reason that he owned but two-thirds of the property. This was, in fact, a plea of non-joinder, a plea in abatement, after issue joined upon the merits, and the Court rightly overruled it. It came too late.

Chitty on Pl., p. 441.
Sheppard v. *Graves*, 14 How., 509–510.

Marsh v. *Brooks*, 14 How., 513.
Palmer v. *Everitson*, 2 Cowen, 417.
Addison v. *Overend*, 6 Term. R., 770.
Keller v. *Miller*, 17 Ind., 207.
Gardner v. *Clark*, 6 How. Pr. R., 449–450.
Sweet v. *Tuttle*, 10 How. Pr. R., 41.

In actions sounding in tort, a non-joinder of plaintiff must be pleaded before the cause is put in issue.

SIXTH. In conclusion I would say that I do not see how many of these questions can be reached by this record. There is no demurrer overruled, no charges asked and refused, no exceptions taken that reach these questions, nor any assignment of errors. There is no exception taken to the finding or any motion for a new trial. There is at the end of the finding an objection thereto, but this raises no question that this Court can consider. It does not appear that all the evidence is in the record, nor is there any mode in the practice of this Court by which any finding of fact, in a case at law, can be re-examined, even if the record showed that all the evidence was before the court. The Court must take this finding as it is, and by that it appears that this property was not purchased under the contract in question; that it never belonged to the so-called Confederate Government; that it was never captured as abandoned property, and that there was, in fact, no just ground for its original seizure by those Treasury Agents; that they were, in fact, trespassers in seizing it. It also appears in this record that this Treasury Agent, when Mr. Tweed purchased, did not claim that it was really property falling under any of these laws. And when the circuit court permitted Mr. Tweed to bond it, it seems to me that the Government

should have been satisfied to seek any remedy it had upon this bond by proof showing any right it had in or to this property.

I would furthermore say that I can not see how this record shows any error prejudicial to Mr. Flanders, or the Government that is defending him, or what good can result from a reversal if any error could be found in the record. It is clear that the property was Mr. Tweed's, and that the Government can not lay any claim to it. It is not captured or abandoned or forfeited, and if the law were that it was not in fact repleviable, the court permitted it to be replevied, and no exceptions were taken to that act. Record, p. 27. Mr. Tweed has it and its proceeds; and if this judgment was reversed neither the defendant nor the Government could get its value or any remedy on the bond. What good then would a reversal do? And if it would result in no real benefit, the Court will not reverse it if technical error could be found in the record. But I claim there is no such error. There is another complete answer to this whole case, which, in this jumble of a record, I had not till now observed.

The statement of facts found in this case is filed May 13, 1868. Record, p. 83. The writ of error was sued out and filed in court on the 21st day of February, 1868, and is actually served upon Mr. Tweed on the 4th day of March, of that year. This is two months and nine days before the statement of facts is filed in the cause. And this statement is filed nearly three months after the writ of error is sued out. It does not appear that this was done by consent. Under these circumstances it is a mere nullity and can not be considered by the Court.

Genneres v. *Bonneman*, 7 Wall, 565.

As the statement can not be considered a part of the record, there is really no question presented here for the determination of this Court, and the judgment of the circuit court must be affirmed.

All of which is respectfully submitted,

T. D. LINCOLN,

Of Counsel for Defendant in Error.

Supreme Court of the United States.

DECEMBER TERM, 1869.—No. 108.

BENJAMIN F. FLANDERS, Plaintiff in Error,

vs.

JOHN P. TWEED, Defendant in Error.

IN ERROR TO THE CIRCUIT COURT FOR THE DISTRICT OF LOUISIANA.

BRIEF FOR DEFENDANT IN ERROR.

BILLINGS & HUGHES,
J. HUBLEY ASHTON,
Of Counsel.

M'GILL & WITHEROW, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

DECEMBER TERM, 1869.

BENJAMIN F. FLANDERS
vs.
JOHN P. TWEED.
No. 108.

THE CASE AS EXHIBITED BY THE RECORD.

In this record of nearly one hundred pages there are not more than *ten* that this court will think it necessary to look at; and only *six* which it will pause for a moment to consider; and these six pages contain nothing whatever that presents any questions of law for its determination.

On page 1 is the *petition*.

It is there averred that the plaintiff, Tweed, is a citizen of Ohio, and the defendant, Flanders, a citizen of Louisiana, the State in which the suit was instituted; and thus the case is brought, so far as the citizenship of the parties is concerned, within the jurisdiction of the circuit court.

Plaintiff alleges, in the petition, that he is the owner, and entitled to the possession, of one hundred and twenty-three bales of cotton, which the defendant has possession of, and refuses to deliver to him. He also avers that the cotton is worth $17,500; and thus the case is brought, by the amount in controversy, within the jurisdiction of the circuit court.

The plaintiff asks judgment for the property.

On May 7, 1866, the defendant filed what are termed "*exceptions*," alleging, among other things, that the one hundred and twenty-three bales sued for were captured property, in his possession "as the legal keeper thereof for the use and benefit of the United States," and that the court below had no juris-

diction of the case; and praying that the suit be dismissed. (Record, page 12.)

Afterwards he filed an *answer*, (Rec., p. 13,) averring that the cotton in controversy was the property of the United States, under a certain contract described between plaintiff and the Treasury Department.

The cause seems to have come on for trial upon these pleadings before the court, without a jury, on January 29, 1868. (Rec., p. 75.)

On that day the defendant filed a "peremptory exception" in the nature of a plea in abatement of non-joinder, averring that a party in interest was not joined as plaintiff in the action. (Rec., p. 73.)

This "peremptory exception" the court overruled. (Rec., p. 75.)

The trial then proceeded, and on the same day, (February 29, 1868,) the court, after hearing the pleadings, evidence, and counsel, rendered judgment for the plaintiff. (Rec., p. 79.)

On the 8th of February what purports to be a bill of exceptions was filed. (Rec., p. 78.)

This document, miscalled a bill of exceptions, recites that the defendant, on the trial, offered to show that another party, not joined as plaintiff, had an interest in the claim; that the testimony was objected to by plaintiff; that the objection was sustained; and that the defendant excepted. This "bill of exceptions" is not *sealed* by the judge.

The judgment was rendered January 29, 1868, and signed February 13, 1868. (Rec., p. 79.)

On February 21, 1868, the defendant took out and filed the present writ of error, and on March 5, 1868, the citation was served on the plaintiff. (Rec., pp. 86, 87.)

After this, on May 13, 1868, a "*statement of facts*," signed by the judge, was filed; that is, nearly *three months* after the cause had been removed into this court. (Rec., p. 83.)

This is the whole of the record that the court will think it necessary to inspect.

FIRST.

The "statement of facts" is not a part of the record of the cause in this court, and cannot be considered here.

1. This is so, independently of the 4th section of the act of March 3, 1865.

The court has directly ruled, in a recent Louisiana case, that a statement of facts, filed without consent of the parties, after the cause is removed here by the service or the issuing of the writ of error, must be treated as a *nullity*.

Generes v. Bonnemer, 7 Wall., 564.

This has always been the rule of this court; and it has had frequent occasion to apply it in cases coming up from Louisiana as well as in other cases.

In United States v. King, (7 How., 846,) Mr. Chief Justice Taney said: "In this case there is a statement by the judge who decided the cause containing his opinion both on the facts and the law, and which is attached to the record, and has been sent up with it. But this opinion appears to have been filed not only after the suit has been ended by a final judgment, but after a writ of error had been served removing the case to this court. This statement of the judge cannot therefore be resorted to as a statement of the case."

In Suydam v. Williamson, (20 How., 437,) the writ of error was issued on the 18th of December, 1854, and on the 29th of January, 1855, a paper denominated the "case" was filed. The court held, in an elaborate opinion by Mr. Justice Clifford, that the fact that this document was filed after the writ of error issued was decisive of the point that it could not be considered. (P. 440.)

There are other authorities, but these are, it would seem, sufficient and conclusive.

2. But *a fortiori* is such a statement of facts a nullity under the regulation of the practice in cases at common law tried

without a jury, provided in the 4th section of the act of March 3, 1865. (13 Stat. at Large, 501.)

A special verdict, rendered after a general verdict and judgment upon it, and after the removal of that judgment to the appellate court, is a thing unheard-of in any practice.

In Insurance Company *vs.* Tweed, (7 Wall., 51,) the court said: "This statute, which is but a reproduction of the system of practice in many of the States, is as binding on the federal courts sitting in Louisiana as elsewhere, and we cannot disregard it."

And in a very recent case, the same learned justice who delivered this opinion indicates, for the benefit of the profession, the several methods of bringing before this court for review the questions of law passed upon in the trial of a cause by the court without the intervention of a jury.

In Norris *vs.* Jackson, (Dec. T., 1869, No. 301,) Mr. Justice Miller, says:

1. "If the verdict be a general verdict, only such rulings of the court *in the progress of the trial* can be reviewed as are presented by bill of exceptions, or as may arise on the pleadings.
2. "In such cases a bill of exceptions cannot be used to bring up the whole testimony for review any more than in a trial by jury.
3. "That if the parties desire a review of the law involved in this case, they must get the court to find a special verdict which raises the legal propositions, or they must present to the court their propositions of law, and require the court to rule on them.
4. "That objection to the admission or exclusion of evidence, or to such ruling on the propositions of law as the party may ask, must appear by bill of exceptions."

SECOND.

What purports to be a "bill of exceptions" is not such; and the ruling on the admissibility of the evidence offered by the defendant, as therein mentioned, cannot be reviewed upon it.

We suppose it to be settled that "unless an exception is reduced to writing, and *sealed* by the judge, it is not a bill of

exceptions within the meaning of the statute authorizing it, and does not become part of the record."

Pomeroy's Lessee *vs.* Bank of Indiana, 1 Wall., 599.

"*Justiciarii apponant sigilla sua*," says Mr. Justice Clifford, "is the express command of the statute."

THIRD.

But the defendant could take nothing by this exception, if the question were before the court upon this record; and the ruling of the court, as well upon the "peremptory exception" as upon the admissibility of the evidence offered by the defendant, tending to show that another party should have been joined in the action, was plainly correct, both upon common law and civil law doctrine.

1. The "peremptory exception" was filed *after* an answer to the merits; it was, therefore, too late, and was properly dismissed, upon the same principle that where a plaintiff sues at common law for the whole chattel, pleading over to the merits is a waiver of a plea of non-joinder.

The Louisiana authorities are abundant to this proposition.

"After an answer to the merits an exception for non-joinder of a co-trespasser is too late. The non-joinder of all the obligors in an action on a joint obligation must be pleaded *in limine*."

2 Hennen's Digest, 1164, No. 7.

An answer to the merits or a default waives any objection to the mis-joinder or non-joinder of parties.

Stewart *vs.* Scudder, 10 A., 216.
Brewer *vs.* Cook, 11 A., 637.
Dunbar *vs.* Murphy, *ib.*, 713.
Code of Practice Louisiana, articles 331, 333.

The common law rule is the same.

1 Chitty's Pleadings, 176.
D'Wolf *vs.* Harris, 1 Mason, 539.

2. The evidence offered by the defendant was inadmissible, for it could not defeat the plaintiff's right of recovery in this action. As Mr. Justice Story said in D'Wolf *vs.* Harris, "It is of no consequence to the defendant if the plaintiff is part-owner only, for as against every one but the other part-owner, or some person claiming his title, he has a right to the possession of the whole. *A fortiori* he has against a wrongdoer."

D'Wolf *vs.* Harris, 1 Mason, 539.

3. Besides, the exception and answer were contradictory: the one alleged that the property was owned in part by E. L. Scott; the other, that it was wholly owned by the United States. "*Nemo allegans contraria est audiendus.*"

Such inconsistent pleading is not allowable.

Louisiana Code of Practice, 149.

State *vs.* Martin, 2 Ann., 667.

FOURTH.

Having thus disposed of the "statement of facts," the "bill of exceptions," and the "peremptory exception," there is nothing left in the record save the *petition*, the "*exceptions*," and the *answer*, (Rec., pp. 12, 13.) There is no demurrer or other pleading on the part of the plaintiff in the record, and, of course, no question of law, as arising under or upon the pleadings referred to, or the evidence on one side or the other in maintenance of the issue joined between the parties, is eliminated or raised by the decision of the court upon this writ of error. The legal presumption in favor of the correctness of the judgment below must prevail, and it must be affirmed if the petition of the plaintiff brings the case within the jurisdiction of the circuit court.

Minor *vs.* Tillotson, 2 Howard, p. 394.

Prentice *vs.* Zanes' Admr., 3 Howard, p. 485.

City of New Orleans *vs.* Gaines, 22 How., 142.

Weems *vs.* George, 13 How., 190.

Bond *vs.* Bond, 12 How., 256.

Guild *vs.* Frontin, 18 How., 135.

FIFTH.

The circuit court has jurisdiction of all suits of a civil nature where the matter in controversy exceeds the sum or value of five hundred dollars, between a citizen of the State, when the suit is brought, and a citizen of another State; (Judiciary act, 1789, sec. 11;) and the petition here shows on its face that the character of the parties, and the amount in dispute, are such as bring this suit within the jurisdiction of the circuit court as thus defined.

It is a suit of a civil nature at common law, being for the recovery of possession of personal property in specie, above the value of five hundred dollars, between a citizen of Louisiana, (where the suit is brought) and a citizen of Ohio.

SIXTH.

But if, contrary to what we suppose to be the well-settled rule of this court, it is proposed to review the judgment of the circuit court upon the "statement" filed after the case had been passed from its control, we apprehend the judgment must be sustained upon those findings of fact.

I. We observe that this statement of facts does not find, expressly or by implication, that this cotton was originally received, collected, or seized by any special agent or agents of the Treasury in any State, or any portion of any State, designated as in insurrection by the President. It finds that the property was seized by various agents of the Treasury on the claim or charge that it was captured, abandoned, or Confederate property, and was the property of the United States, and subject to forfeiture under the acts of Congress. But *where* it was seized by these agents is not found. It is found, also, that it was sent to the special agent at Shreveport, to be there forwarded to New Orleans, but from what State, district, or place it was sent to Shreveport is not found. The cotton may have been originally seized (for anything that appears in the finding) in a loyal State or district, and from thence transmitted to the agent at Shreveport.

Now, we suppose it to be essential, upon any theory of the immunity of agents, under the captured and abandoned property acts, from suits to recover property in their hands, that it should clearly appear, to entitle them in any case to such exemption, that the property was originally taken in an insurrectionary district. No taking of property beyond the limits of the insurrectionary districts could possibly be a taking under *color* even of those acts, and no holding of property taken without those limits could be legally described as a "holding under *color* of those acts." *Ex vi termini*, property without those districts was absolutely beyond and exempt from the control and authority of the Treasury agency constituted under the act of March 12, 1863. It could not be seized, or received, or collected, or held by it. The functions of these agents were to be exercised in respect to property having its *situs* within the districts designated as insurrectionary. Over such property alone were they entitled to exercise jurisdiction, and none other was subject to their authority.

We suppose it to be equally certain that no construction of this verdict can import into it a finding that the original seizure occurred within an insurrectionary district; and that the court will assume, construing the findings most favorable to the judgment, that the fact was the contrary.

II. Not only is the *place* of the original seizure of this cotton by the "various agents of the Treasury," not found in the statement, but the precise *time* of the seizure is not ascertained.

It is found that the cotton was purchased by Mr. Tweed in February and March, 1866; that it was *then* in the hands of the Treasury agent at Shreveport; and that it had been *theretofore* seized by Treasury agents and sent to the agent at Shreveport. "*Theretofore seized;*" that is, before February or March, 1866; but the year or the month is not stated. It may have been seized for the first time in January, 1866, or in the latter part of 1865.

Now, we contend that it is of the highest importance to the

maintenance of a claim of color of authority, under the captured and abandoned property act, that the agent should show that the property was taken *before* the district in which it was seized ceased to be within the designation of an "insurrectionary district" within the meaning of that act; for we contend that no seizure of property could lawfully be made, under the captured and abandoned property act, *after* the insurrectionary character of the districts of the South was removed, and the special agency system, established by that act, had terminated; both of which things were effected by the President's proclamations of June 13, 1865, and June 24, 1865, removing all restriction on intercourse and trade with all the States theretofore declared in insurrection lying east and west of the Mississippi. (13 Stats., p. 763, 769.)

Our proposition is, that after those proclamations no special agent of the Treasury could lawfully seize any property in any district embraced by the original proclamation of the President of August 16, 1861, made under the authority of the non-intercourse act of July 13, 1861; and that any seizure of property by a Treasury agent after those proclamations was without color of authority under the act of March 12, 1863.

By those proclamations property *theretofore* captured by or surrendered to the forces of the United States could not be removed, but all such property, as well as all property *theretofore* seized as abandoned, was required to be turned over to the regularly appointed officers of the customs.

The proclamations put an end to the non-intercourse system and the insurrectionary district system established under the act of July 13, 1861. They left no "insurrectionary districts" within which the Treasury agents could operate. After their date no seizure could be made within an insurrectionary district; and consequently after their date no seizure could be made under color of authority of the act of March 12, 1863.

The whole scope and operation of that act, so far as the seizure of property is concerned, and so far as the duties and authority of the Treasury agents in regard to the seizure of property are concerned, were confined to the districts denomi-

nated in the act as "insurrectionary districts;" and when those districts ceased to exist, the act became, in those respects, *functus officio*.

A seizure of property afterwards by a Treasury agent was wholly void, a mere trespass, an act done without color of authority from the statute; and in respect to such seizure the ordinary courts of justice have unquestionable jurisdiction to administer relief, by restoring the property to the owner, or giving him damages for its loss. If the "various Treasury agents," who originally seized this cotton, seized it in December, 1865 or January, 1866, or at any time after the proclamations of June 13 and June 24, 1865, they were without any warrant or color of authority for such seizure under the captured and abandoned property act; and the court below had jurisdiction to determine the ownership, and restore the possession to the rightful owner, or award him damages for the taking.

As we have said, the court below does not expressly find the date of the original seizure of the cotton; and in this condition of the findings this court will construe them most favorably to the judgment, and presume that the court in fact determined and found from the evidence that the property was seized by the agents after the abolition of the insurrectionary districts by the President's proclamations of June, 1865.

III. Our third proposition in this consideration of the facts found by the court is, that if at the time of the bringing of the action the insurrectionary *status* had fully terminated, the circuit court, as a court of general jurisdiction, could entertain the suit, although the original seizure may have occurred before the insurrectionary districts were abolished by the proclamations which have been referred to.

On whatever foundation of reason and policy the arguments against the jurisdiction of the ordinary courts of justice to entertain suits against Treasury agents during the rebellion may be supposed to rest, we apprehend that no just objection could be or can be raised to such courts assuming that

jurisdiction, after the expiration of the rebellion, in respect to property found *in specie* in the hands of an agent of the Treasury, and which has not been subjected to the process of sale and the deposit of the proceeds in the Treasury under the act of March 12, 1863.

Now, before this suit was brought (April 22, 1866) the President had not only issued the several proclamations to which reference has been made, but had also issued his "peace proclamation" of April 2, 1866, announcing the final termination of the rebellion throughout the United States.

In the case of Elgee *vs.* Lovell, familiar to this court, the cotton was taken in March, 1864, in Mississippi, and the suit for its recovery was brought by an "alien enemy" in September, 1864, and removed into the circuit court for Missouri, in October, 1865. Mr. Justice Miller seems to have sustained the plea interposed by the Treasury agent, principally upon the ground of the impolicy and hardship of subjecting these agents, during the rebellion, to the necessity of defending suits for property in their hands. But he required, in that case, in order to raise a bar to the suit, that it should be distinctly shown that the property held as abandoned property, was seized in one of the districts declared by the proclamation of the President to be in a state of insurrection, by a special agent for that district, and that it was held at the time of suit brought by an agent of the Treasury for the purpose of disposition under the act of 1863.

But in the present case the plaintiff never was an "alien enemy." The suit is brought after the termination of the rebellion. The property is not found to have been seized in any State at any time in a condition of insurrection; nor is it ascertained that the original seizure occurred before the abolition of the "insurrectionary districts" east and west of the Mississippi, even if it occurred within the limits of what was once an insurrectionary district.

IV. The finding of fact sufficiently shows, that the right of detention asserted by the defendant, in respect to this property, was *not* claimed or founded upon anything in the captured

and abandoned property act, but upon a claim of ownership by the United States under a contract or transaction between the plaintiff and the Treasury Department, in respect to the collection of confederate cotton of a certain description.

It seems that the plaintiff and the Treasury Department, acting by the supervising special agent at New Orleans, made a contract, by which it was agreed that the former should have three-fourths and the United States one-fourth of all confederate cotton obtained by the plaintiff from the persons who had possession of it, and which he might transport to New Orleans. The plaintiff bought from the owners a lot of cotton in the custody of a revenue agent at Shreveport. It was *delivered* to him by the Treasury agent, and shipped by him to his consignees at New Orleans, who received and stored it. The defendant then asserted a claim to one-fourth of this cotton, as the property of the United States, *in virtue of the contract*, and detained this amount from the plaintiff. That cotton the plaintiff sought to recover in this action, upon the ground that the cotton thus purchased was not embraced by the contract. That was the precise issue in fact between the parties.

The right to the custody and possession of the cotton was placed upon the ground that it was the general property of the United States, and not upon the ground that it was a subject within the jurisdiction of the Court of Claims under the act of 1863. It was withheld from the plaintiff by the defendant not in the performance of his duty under that act to place the proceeds of the cotton within the jurisdiction of the Court of Claims, but on a claim that it was not *his* property, but the property of the Government.

How *can* it be said, then, that the cotton was held in virtue or under color of the authority conferred by the act of 1863?

In other words, the facts show that this cotton was not detained by the defendant under that act; and, therefore, the jurisdiction of the court below to decide the rights of the parties was undoubted.

The test of this would be the situation of the proceeds of the cotton in question after they should reach the Treas-

ury. Would they be proceeds subject to the jurisdiction of the Court of Claims, or proceeds constituting part of the general moneys of the United States? Would the Government be a trustee for the plaintiff in respect to these proceeds, or would the equitable title be in the United States?

Manifestly, if the defendant's theory, that this cotton was confederate cotton, owned by the United States, and subject to its absolute disposition, under the contract with the plaintiff, be correct, the proceeds would pass into the Treasury as the proceeds of any other property of the United States sold by their authority. The Court of Claims would have no jurisdiction to award them to the plaintiff, under the act of 1863, because they would not have been realized by the processes of that statute.

The defendant is estopped, by the claim of ownership set up in respect to this cotton, from contending that he held in virtue of the act of 1863, and from denying, on that ground, the jurisdiction of the circuit court to take cognizance of this suit.

V. By penetrating a little further into the case, as set forth in the statement of facts, we will find that the entire action of the defendant and the Treasury Department in respect to this cotton is opposed to the idea that they were dealing, or that they thought they were dealing, with a subject within the jurisdistion of the Court of Claims, or that they ever professed to hold the property for adjudication by that court under the act of 1863.

What are the facts? The cotton was delivered into the possession of the plaintiff by the agent at Shreveport. That agent, so far as he could, released it from custody. He gave it up to the plaintiff as purchaser. The plaintiff then consigned it to his agents in New Orleans, who stored it. In that situation the cotton was *seized* by the defendant, and the matter referred to the Secretary of the Treasury. Under the order of the Secretary, he afterwards *relinquished* to the plaintiff three-fourths, and retained the one-fourth (this cotton) for the further orders or the express adjudication of the

Secretary himself of the plaintiff's claim or right to it. (Record, p. 84.) It is to be presumed that the Secretary adjudicated the claim against the plaintiff, and the cotton was detained from him.

What does all this show? Clearly and distinctly, that the department claimed this one-fourth under the contract. The part belonging to the plaintiff, if the contract applied, was released to him; the residue was retained in the custody of the defendant.

The *contract* was supposed to be the law of the case, and not the statute of 1863. The property was held, and meant to be held, under the *contract*, and not under the *statute*.

There is no principle of American jurisprudence, and no statute law, we respectfully submit, which prohibits a court from interfering with and controlling the custody of property held by an officer of the United States *under color of a contract* with the United States. The farthest limit to which the authorities reach, is the denial of jurisdiction to the courts, in certain cases of executive custody, to interfere with property held under the command and authority of some statute law of the United States. No one has ever yet supposed that there could be no judicial interference with a right of executive custody claimed or asserted under a contract.

Slocum *vs.* Mayberry, 2 Wh., 9, 10, 12.
Harris *vs.* Dennie, 3 Pet., 303.
Taylor *vs.* Carryl, 20 How., 595.
Freeman *vs.* Howe, 24 How., 458.
Buck *vs.* Colbath, 3 Wall., 334.

VI. The foregoing remarks have proceeded altogether independently of the general question, whether the exclusive remedy, in the case of property seized and held by the proceedings under the act of March 12, 1863, is by petition to the Court of Claims. That question is sufficiently discussed in a brief by our colleague filed in this cause. We have shown from the facts reported to this court that this cotton was not seized or held, or claimed as seized or held, by the defendant under the authority or color of authority of that act.

VII. This view, if correct, will dispose of any attempted application of the late act of July 27, 1868, (15 Stats., 243,) to the present case, as that only applies to cases, future cases, in regard to seizures made in virtue of or under color of the act of 1863. This act, however, was passed six months after the present judgment was rendered. Though a mistaken opinion of the legislature concerning the law does not make the law, yet it may be so declared as to operate *in futuro*.

P. M. General *vs.* Early, 12 Wheat., 136.

SEVENTH.

We have confined our remarks to the questions which seemed to arise directly out of the facts found by the court below, and have not extended them to the propositions of law which seem from the concluding part of the statement of facts to have been urged, on one side and the other, upon the court below, and to have been passed upon by the circuit court. So far as any propositions of law were relied on by the defendant, the ruling of the court upon them cannot be reviewed here, as that ruling does not appear by any bill of exceptions, as required by the case of NORRIS *vs.* JACKSON (*supra.*) The concluding words of the statement, "to which rulings of the court, the defendant then and there objected," cannot have the effect of converting it into a bill of exceptions.

EIGHTH.

No error appearing in the record, the judgment should be affirmed.

J. HUBLEY ASHTON,
Of Counsel.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

BENJ. F. FLANDERS, Deputy Gen'l Agent of the United States Treasury Department, *Plaintiff in Error.*
vs.
JOHN P. TWEED.

No. 108.

BRIEF FOR THE PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

BENJ. F. FLANDERS, Deputy Gen'l Agent of the United States Treasury Department, *Plaintiff in Error.*
vs.
JOHN P. TWEED.
No. 108.

In error to the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT.

This is a writ of error to a judgment rendered by the circuit court of the United States for the district of Louisiana, in a suit brought by John P. Tweed, the defendant in error, against Benj. F. Flanders, deputy general agent of the Treasury Department, the plaintiff in error, to recover the possession of 123 bales of cotton, which the former claimed to have been unjustly withheld from him by the latter.

From the record of the proceedings in the case, it appears that, on the petition of Tweed, the plaintiff below, a writ of sequestration was issued by the circuit

court against the cotton in controversy and duly executed, and that a citation was then issued and served on Flanders, the defendant below, together with a copy of the plaintiff's petition. (Printed transcript, pp. 1 to 7.)

The defendant appeared by his attorneys, and, upon a motion made by them to bond the property, the court ordered that the defendant have leave to bond, on giving security, &c. Afterwards, however, on motion of plaintiff's attorneys, the defendant was ruled to show cause why the order giving him leave to bond should not be set aside, and the plaintiff have leave to bond the property upon giving the requisite security; and at the same time it was ordered by the court, that until the bonding under this rule, all proceedings on the part of the defendant for bonding be stayed. (*Ibid.*, p. 7.) Subsequently the court set aside and annulled the order allowing the defendant to bond, as having been erroneously entered, and directed another entry to be substituted in its place, to the effect that the defendant's motion to bond was taken under advisement, and the cotton in the meantime ordered to be appraised. The court also directed that so much of the plaintiff's motion as prayed to set aside the order allowing the defendant to bond be stricken from the minutes, leaving the plaintiff's application to bond undisturbed. (*Ibid.*, p. 9.) A motion was next made by the United States attorney to bond the property to the United States, suggesting to the court that the cotton sequestered was

the property of the United States, and was only held by defendant as a special agent of the Treasury Department. (*Ibid*, p. 10.) But the court finally ordered that the rule previously taken by the plaintiff be made absolute, and that he be permitted to bond the property; and denied the applications to bond made in behalf of the defendant and the United States. (*Ibid.*, p. 27.) Thereupon, the property was bonded to the plaintiff, at a valuation of $14, 807 68, as estimated by the appraisers appointed by the court to value the same. (*Ibid.*, pp. 30, 31.)

Pending the proceedings on his application to bond, the defendant also, by his attorneys, moved for and obtained a rule upon the plaintiff to show cause why the writ of sequestration should not be set aside, on the following, among other grounds filed: That no statutes of the United States, and no rule of law or judicial proceeding established by their courts, warranted the issuing of a writ of sequestration against the defendant in possession of the property of the Government, as its officer properly appointed and qualified, and the legal custodian of the property; that the defendant was in possession of the cotton involved in the suit by virtue of a contract between the plaintiff and the Secretary of the Treasury in relation to cotton formerly belonging to the so-called Confederate States; that the cotton in question was a portion of the latter; and that over this cotton so situated, and over the plaintifi's claim to it, if he really had any, the court was entirely without jurisdic-

tion. (*Ibid.*, p. 8.) But this rule was subsequently continued over to a stated day, and then continued indefinitely. (*Ibid.*, pp. 28, 35.)

Exceptions to the plaintiff's petition were also filed by the defendant, and a dismissal of the suit prayed for. (*Ibid.*, pp. 12, 13.) At the same time an answer to the petition was filed, wherein the defendant prayed for judgment decreeing the property sequestered to belong to the United States, and its immediate restoration to him as its legal and proper custodian, and all further general and equitable relief. (*Ibid.*, pp. 13, 14.)

The exceptions of defendant set forth that the property in dispute came under the head of captured property, and was in the possession and custody of the defendant as such at the time of sequestration, as the legal keeper thereof, for the use and benefit of the United States; that it had been turned over to the agents of the Treasury Department by the officers of the United States army, with the knowledge of the plaintiff, who was a contractor with and a quasi officer of the Government, and with whose knowledge and assent it was regularly shipped to and received by defendant; that the property sequestered was *de facto* and *de jure* "captured property," under the statutes of the United States, and should be sold and its proceeds paid into the Treasury, there to await the action of the Court of Claims, when duly invoked; that all the courts of the Government were prohibited from taking original cognizance of such a case; that the court was without

any jurisdiction to inquire into the mode of capture, the question of capture, or the time, manner, and circumstances of capture; and that the property, being the property of the Government, and in the hands of the proper officer of the Treasury Department, was irrepleviable.

His answer denied that the ownership of the 123 bales of cotton was in the plaintiff, as alleged in the petition; admitted that the defendant, as an officer of the United States, held possession of the same at and before the time the writ of sequestration issued; and averred that the said cotton, with other lots, had been regularly shipped to the defendant, and received by him in his official capacity by and from the Treasury agent at Shreveport, under a contract between plaintiff and the Treasury Department concerning cotton known as the Confederate States cotton, captured in war, and turned over to the Treasury Department by the officers of the United States army; that, by virtue of said contract and certain services rendered by plaintiff, three-fourths of the number of bales received by defendant were turned over to plaintiff, and one-fourth was reserved by the United States, under the adjudication provided for in the contract; that the said 123 bales formed the one-fourth which was the property of the United States; and that this was *de facto* and *de jure* captured or abandoned property.

Subsequently, the United States district attorney intervened in behalf of the Government, and filed a

claim to the cotton sequestered by the plaintiff; setting forth that the United States were the sole, true, and bona fide owners of said cotton, and that no other party had any claim or right to or interest therein, all of which it was proposed to show to the court by due proof; that said cotton was in possession of and held by the defendant at the time it was sequestered for the United States, as a special agent of the Treasury Department; wherefore it was prayed that the claim of the United States to said cotton be allowed and adjudged good, and that the proceedings instituted by plaintiff against the same be dismissed. (*Ibid.*, pp. 22, 23.)

At a later stage of the proceedings, a peremptory exception was filed in behalf of the defendant against the right of the plaintiff to stand in judgment in the suit, on the ground that the latter was not and never had been the owner of the claim sued on, that he owned therein only a two-thirds interest, and that the other one-third interest in the cotton sued for by the plaintiff was and had at all times been in one E. L. Scott; wherefore the suit was asked to be dismissed, &c. (*Ibid.*, p. 73.) But this exception was overruled. (*Ibid.*, p. 75.)

Defendant afterwards, on the trial, offered in evidence testimony to prove that the plaintiff had a partner in interest in the claim set up, which, being objected to, was ruled out. Thereupon defendant's counsel took a bill of exceptions, which was allowed by the court. (*Ibid.*

p. 78.) The bill states, that "on the trial of this cause defendant offered to show by the testimony of John P. Tweed, plaintiff in this suit, and J. L. Scott, that the said John P. Tweed had a partner in interest in the claim set up against B. F. Flanders, and under the peremptory exception the said Tweed was absolutely without right to stand in judgment alone, and without joinder of his said party in interest; to which said testimony plaintiff, by his counsel, objecting, upon the grounds that said exception had been overruled by the court, and that the defendant's plea of non-joinder was too late, and could not be allowed after issue joined on the merits, and was inconsistent with his plea to the merits, to wit, that the property claimed was the property of the United States, which objections were sustained by the court, and said testimony ruled out."

The cause was tried by the court without a jury, as it would seem, by consent of the parties, and after the hearing plaintiff was adjudged the lawful owner of the property sequestered, the bond given by him therefor was directed to be cancelled, and the defendant ordered to pay costs of suit. (*Ibid*, pp. 79, 83.)

Afterwards, on motion of defendant's counsel, the plaintiff was ruled to show cause why a new trial should not be granted. The grounds on which the application was based were, that the cotton forming the subject of the suit was purchased by the plaintiff under the provisions of his contract with the Treasury Department, and before the revocation of the same; that the acts of

the plaintiff, up to the very moment of the demand made for said cotton from the defendant, show that he recognized the contract in question as binding upon him; that he shipped the cotton in question to O. H. Burbridge, then supervising special agent of the Treasury Department at New Orleans; that he received three-fourths of the entire shipment; that by the terms of said contract any cotton purchased under its provisions prior to its revocation was subject to the deduction of one-fourth; that the cotton was purchased, forwarded, and delivered to said Burbridge by the plaintiff, with full understanding on the part of all parties in interest concerning the deduction of one-fourth; that the 123 bales in controversy were clearly shown by the evidence adduced to be, under the provisions of said contract, the property of the United States; that since the trial of the cause the defendant had discovered new and important evidence material to the issue, which was to the following effect, viz: That Scott, Cage & Co. and C. A. Weed & Co. were interested as partners in the contract of plaintiff under which the cotton was purchased, and had between them a contract in writing which determined their interests, and which was in possession of one of the contracting parties, and could be procured by an order of the court; that, by virtue of this contract, the said Scott, Cage & Co. and C. A. Weed & Co. had assented, as agents and co-partners of the plaintiff, to the division of a lot of 495 bales of cotton, purchased under the contract of plaintiff,

whereby one-fourth thereof (the 123 bales in dispute) was reserved to the United States; and that in the division made of said lot of cotton they signed their names to a paper accepting said division, which document was then in defendant's possession, though, until the existence of said contract between Scott, Cage & Co., C. A. Weed & Co., and the plaintiff was made known to him, he was not aware of the pertinency of said document. But the court, after hearing argument, discharged the rule, and refused to grant a new trial; and on the following day final judgment was signed. Thereupon the defendant applied for and obtained a writ of error carrying the case before this court. (*Ibid.* pp. 75 to 82.)

The record exhibits copies of numerous documents offered in evidence on the hearing of the rule to bond, (*ibid.*, pp. 15 to 22,) and also embodies a large mass of depositions which were taken under commission on interrogatories and cross-interrogatories by the respective parties, and submitted as testimony on the trial of the cause on its merits. (*Ibid.*, pp. 26, 27, and 36 to 74.) However, the facts proved in the case, as found by the court, are spread upon the record in the form of a "statement," signed by the judge. (*Ibid.*, pp. 83, 84.) This statement must, we suppose, be regarded as of the nature of a special verdict. (Saulet *vs.* Shepherd, 4 Wall., 507.) It reads as follows:

"This suit was instituted to recover possession of 123 bales of cotton, which the plaintiff claimed to be

unlawfully detained and withheld by the defendant. A writ of sequestration issued from this court. The property was bonded by and delivered to the plaintiff.

"On filing stipulation, waiving trial by a jury, and consenting to the trial of the issue by the judge, the case came on to be heard on the 29th day of January, 1868, on the pleadings and evidence, and was argued by counsel. Thereupon the court finds the following as facts proved in the case:

"In the months of February and March, 1866, the plaintiff purchased, at Shreveport, La., from different owners, certain lots of cotton, in the aggregate 495 bales. This cotton had been theretofore seized by various agents of the Treasury Department, on the claim or charge that it was captured, abandoned, or Confederate cotton, and was the property of the United States, and subject to forfeiture under the acts of Congress, and sent to the supervising special agent at Shreveport, S. G. Burbridge, to be there forwarded to the agency of the department of New Orleans.

"The plaintiff purchased the property while it was thus in the hands of the Treasury agent, and paid in coin $75 per bale, the then market value of cotton at Shreveport. It was shipped by the plaintiff from Shreveport to New Orleans, to his consignees, a part to Scott, Cage, & Co., and the remainder to Weed & Co., subject to the order of O. H. Burbridge, special supervising agent of the Treasury Department at New Orleans, for adjudication, insured in the open policy of

O. H. Burbridge, agent, and it was received by the consignees, who stored it. At the time of the purchase by the plaintiff, he held a contract made with the Treasury Department to purchase and collect Confederate cotton of a certain class and description, delivering it to the Government, who were to reserve one-fourth and deliver to the plaintiff the remaining three-fourths. This contract is filed and makes a part of this record. (See pp. 21, 41, 73.)

"It appeared that the defendant, under color of the duties of his office as deputy general agent of the Treasury Department, claimed to hold one-fourth of the cotton so purchased by the plaintiff as the property of the United States, and under the orders and directions of the Secretary of the Treasury, relinquished to the plaintiff the three-fourths of the cotton, and detained the one-fourth (the 123 bales) for the further orders or express adjudication by the Secretary himself of the plaintiff's claim or right to it.

"The plaintiff insisted that the property was not purchased under the contract, but that he was the owner, and entitled to relinquishment of the whole, and institutes this suit. It was further proved, that the cotton had at no time been the property of the Confederate Government, and was not abandoned by the owners, and there appears to have been no just cause for its seizure by the Treasury agent originally.

"It was insisted on the part of the defendant, that the property was seized by the agents of the Treasury

Department, appointed by the Executive Department pursuant to the act of Congress of March 3, 1863, and the act of 2d of July, 1864, and the rules and regulations announced and promulgated for their government, and that while so under seizure was irrepleviable, and the court had no jurisdiction; that the exclusive control of the subject-matter was conferred on the Executive Department of the Government by law.

"The counsel for defendant further insisted that the plaintiff was acting as an agent of the Treasury Department in the purchase and collection of the cotton under his contract, and that it was not competent for him to question the rights of the Government, or assert an opposing interest to that of the United States, or to obtain an interest therein adverse to the Government.

"But the court, maintaining that it had jurisdiction to try and determine the suit, and that the cotton was not of the class of cotton referred to in the plaintiff's contract, and was therefore not purchased under the contract, nor as an agent for the Government, and that he was authorized to purchase it under the circumstances, and that the suit was properly brought and the plaintiff entitled to recover, and entered judgment in his favor; to which rulings of the court the defendant then and there objected."

ARGUMENT.

I. The court below had no jurisdiction over the subject-matter of this suit.

The 1st section of the act of March 12, 1863, entitled "An act to provide for the collection of abandoned property," &c., (12 Stat., 820,) authorized the Secretary of the Treasury to appoint special agents "to receive and collect all abandoned or captured property in any State or Territory, or any portion of any State or Territory, of the United States, designated as in insurrection against the lawful government of the United States by the proclamation of the President of July 1, 1862," provided that such property should not include any kind or description which had been used, or which was intended to be used, for waging or carrying on war against the United States, such as arms, ordnance, ships, steamboats, or other water craft, and the furniture, forage, military supplies, or munitions of war. The proclamation referred to designated the States of Louisiana and Texas, among others, as in insurrection. (See 12 Stat., 1266.) By the 2d section of the act, property received or collected by such agents might be appropriated to public use, on due appraisement and certificate thereof, or forwarded to any place of sale within the loyal States, as the public interests might require; all sales of such property to be made at auction to the highest bidder, and the proceeds thereof to be paid into the Treasury. The 3d section provided that any person claiming to have been the owner of any such abandoned or captured property might, at any time within two years after the suppression of the rebellion, *prefer his claim to the proceeds*

thereof in the Court of Claims, and on proof to the satisfaction of said court of his ownership of the property, of his right to the proceeds thereof, and that he had never given any aid or comfort to the rebellion, receive the residue of such proceeds, after the deduction of any purchase-money which might have been paid, together with the expense of transportation and sale of the property, and any other lawful expenses attending the disposition thereof. The remaining provisions of the act appear to be unimportant in connection with this case.

By the 3d section of the act of July 2, 1864, entitled "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property," &c., (13 Stat., 375,) the 1st section of the said act of March 12, 1863, was extended so as to include the descriptions of property mentioned in the act of July 13, 1861, to further provide for the collection of duties on imports, &c., (12 Stat., 255,) and in the act of July 17, 1862, to suppress insurrection. &c., (12 Stat , 589;) and the sales provided for in the act of 1863 were authorized to be made at such places as might be designated by the Secretary of the Treasury. The 8th section of the act of July 2, 1864, also empowered the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any products of States declared in insurrection, at such prices as should

be agreed on with the seller, not exceeding the market value thereof at the place of delivery, nor exceeding three-fourths of the market value thereof in the city of New York at the latest quotations known to the agent purchasing, provided that no part of the purchase-money for any products so purchased should be paid or agreed to be paid out of any other fund than that arising from property sold as captured or abandoned, or purchased and sold under the provisions of this act. All property so purchased was required to be forwarded for sale at such places as should be designated by the Secretary of the Treasury, and the moneys arising therefrom, after payment of the purchase-money and the other expenses connected therewith, were required to be paid into the Treasury. The 11th section of this act further provided, that the Secretary of the Treasury, with the approval of the President, should make such rules and regulations as were necessary to secure the proper and economical execution of its provisions, &c.

Rules and regulations concerning the collection, receipt, and disposition of captured and abandoned property, under these acts of March 12, 1863, and July 2, 1864, were prescribed by the Secretary of the Treasury on the 29th of July, 1864, and approved by the President on the following day, (see reprint of a compilation of the acts, and rules, and regulations relating to captured and abandoned property, &c., published in 1868, pp. 62, 80;) and on the 24th of September, 1864, regulations were also issued by the Secre-

tary, with the approval of the President, for the purchase of products of the insurrectionary States on government account, under the provisions of the last-mentioned statute, which, however, were afterwards superseded by the amended regulations relating to the same subject promulgated on the 9th of May, 1865. (*Ibid.*, pp. 101, 107.)

Under the regulations respecting the collection of captured and abandoned property, where such property was liable to be lost or destroyed in consequence of its location being unknown to the government agents, or from other causes, such agents were authorized to contract, on certain terms, with parties proposing to collect and deliver the same for a compensation. (*Ibid.*, p. 83 par. X.) But those agents were prohibited from releasing any property already collected or received by them as captured and abandoned, to any persons claiming ownership thereof, except by special authority from the Secretary of the Treasury. (*Ibid*,. p 84, par. XIII.)

The amended regulations respecting the purchase of products of the insurrectionary States confined the operations of the purchasing agents of the Government to the single article of cotton. They were required to give public notice, at the places to which they were assigned, that they would purchase, in accordance with those regulations, all cotton *not* captured or abandoned which might be brought to them. To comply with the provisions of the 8th section of the act of July 2, 1864, they were also required to receive all cotton so brought,

which was not captured or abandoned, and forthwith return to the seller three-fourths thereof, which portion should be an average grade of the whole, according to the certificate of a sworn expert; the remaining one-fourth to be retained by the agents. Sales of the cotton thus retained as the difference between three-fourths of the market value and the full market value thereof in the city of New York were not authorized to be made by the purchasing agents except under special instructions from the Secretary of the Treasury; and in the absence of such instructions, or until otherwise directed, they were required to ship the property without delay to the cotton agent of the Government at New York. (*Ibid.*, p. 107, par. III to VII.)

On the 21st of November, 1865, the Secretary of the Treasury issued a circular, (which does not appear in the compilation cited above,) prescribing further rules for the government of officers and agents of the Treasury Department connected with the collection of captured and abandoned property. Among other regulations contained in that circular are the following:

"3. In cases where cotton formerly belonging to the so-called Confederate Government has been purchased, and is held by persons alleging that the same was purchased for the purpose of delivering it to agents of this Department authorized to purchase the products of insurrectionary States on government account, in pursuance of contracts made with such agents, it will be taken by agents of this Department and treated as

captured property. Persons claiming such property will be advised, that upon presenting to the Secretary of the Treasury any claims they may have in the premises, contracts made by them with the purchasing agents will be respected, and parties who have acted in good faith in the execution of such contracts will be protected.

"4. Hereafter, agents forwarding captured cotton will take measures to insure the same, while in their possession or in transit from the place of shipment to New York, being careful to make such insurance in reliable companies, and on the most favorable terms possible for the Government."

Now, it was proven on the trial, as appears by the statement of the court, that the cotton involved in this suit had been seized by various agents of the Treasury Department, as captured, abandoned, or Confederate cotton, and sent to the supervising special agent at Shreveport, to be thence forwarded to the agency of the Department at New Orleans; that it was under seizure, and in the hands of the Treasury agent at Shreveport, even before it was purchased by the defendant in error from parties claiming to own the same; that in its transit thence to New Orleans it was insured by the agent of the Department, in compliance with the regulations mentioned above; and that the consignees at the latter place to whom it was shipped held it subject to the order of the government agent there.

The property thus continued in the custody of the

Treasury agent appointed to execute the provisions of the acts of 1863 and 1864, who, under the regulations issued in pursuance of these acts, could not release it to any persons claiming ownership thereof, except by special authority of the Secretary of the Treasury.

The claims of such persons, however, were authorized by that legislation to be adjudicated in a prescribed forum, the Court of Claims; and Congress having thus made provision for determining the rights of claimants of captured and abandoned property by a particular tribunal, jurisdiction of all other tribunals over the same subject was impliedly excluded; and this is true of property honestly taken and held by a Treasury agent as captured or abandoned property, even although it was not in fact either captured or abandoned property. Such we understand to be the effect of the decision by a divided court of Sells, adm'r of Elgee *vs.* Lovell, decided in this court January 28, 1868, affirming the judgment of the circuit court of the United States for the eastern district of Missouri. (See the opinion of Miller, J., in the circuit court.) This view is, moreover, expressly sanctioned by the subsequent act of June 27, 1868, (15 Stat., 243,) the 3d section of which declares it "*to have been* the true intent and meaning" of the act of March 12, 1863, "that the remedy given in cases of seizure under said act, by preferring claims in the Court of Claims, should be exclusive, precluding the owner of any property taken by agents of the Treasury Department as abandoned or captured property, in

virtue or under color of said act, from suit at common law, or any other mode of redress whatever, before any court or tribunal other than the Court of Claims." This section takes away the jurisdiction of the circuit court over the case, if it ever had any. (Insurance Co. *vs.* Ritchie, 5 Wall., 541.) The remainder of this section, not herein cited *verbatim*, makes the facts found in this case a good defence.

Accordingly, it is submitted that, upon the facts as proved, the court below could exercise no jurisdiction over the cotton in question, and that the plaintiff below should have been left to pursue his remedy before the Court of Claims. (Mrs. Alexander's cotton, 2 Wall., pages 422, 423; Turner's case, 2 Nott & Huntington, 390.)

II. The cotton having been seized as captured and abandoned property, under the operation of the act of March 12, 1863, the title of the former owners thereto became completely divested by the fact of seizure, and there was left in them simply a claim to the net proceeds after the sale of the property, subject to the determination of the Court of Claims, agreeably to the provisions of that act. Accordingly the transfer of the cotton, while under seizure, was in effect the assignment

of an unliquidated pecuniary demand against the United States, and therefore void, under the act of February 26, 1853. (10 Stat., 170; Coté *vs.* United States, 3 Nott & Huntington, p. 64, *et seq.*)

III. The cotton was irrepleviable, being held and detained by the defendant below in execution of a statute of the United States, under due appointment and authority for the execution of such law, and consequently in the custody of the law; and therefore the writ of sequestration was improperly issued, and should have been set aside.

At the institution of the suit below, the plaintiff in error was holding this cotton as captured, abandoned, or Confederate property, under orders of the Treasury Department, for lawful disposition. This was prior to August 20, 1866, and the rebellion was not yet wholly suppressed. This cotton came from and was seized in Texas, then being enemies' country. It has already been shown that the Department was authorized by statute, through its agents, to receive, collect, and dispose of such property, and that exclusive jurisdiction for adjudicating the claims of parties alleging ownership thereof was conferred by Congress upon a particular forum. Under the statute, it necessarily devolved upon the

Department to judge in the first instance what property was liable to seizure, detention, and disposal; and it is submitted that such seizure, detention, and disposal could not lawfully be disturbed by process issuing from a different forum than the one referred to, at the instance of claimants, but that, by force of the statute, the Department became entitled to the custody of the property and of the proceeds thereof until the rights of such claimants should be adjudicated by the tribunal provided by law for that purpose. Any process from another tribunal which interfered with that custody was, therefore, in violation of the statutory provisions alluded to, and clearly inoperative. There is no pretence that the defendant acted in the premises in wilful violation of his duty. (See sec. 8, chap. 298, Acts of 1866, 14 Stat., 329, and printed transcript, p. 84, 85.)

Slocum *vs.* Mayberry, 2 Wheat., 1.

Harris *vs.* Dennie, 3 Pet., 292.

Taylor *vs.* Curryl *et al.*, 20 How., 583.

Freeman *vs.* Howe, 24 How., 450.

Ableman *vs.* Booth, 21 How., 506.

Murray's lessee's *vs.* Hoboken Land Co., 18 How., 280.

The United States *vs.* Ferrara, 13 How., 40.

Cary *vs.* Curtis, 3 How., 234.

IV. The peremtory exception of the defendant below to the absolute want of right of the plaintiff to stand in judgment was pleadable after issue joined on the merits, or at any stage of the proceedings; and the court, therefore, erred in overruling the exception on the ground (as it would seem) that it came too late.

§ 1, ch. 181, Acts of 1824, 4 Stat., 62.

Brown *vs.* Saul, 4 Martin, (N. S.,) 437.

Union Bank *vs.* Dunn, 17 La., 236.

Cure *vs.* Porte, 18 La. An., 469.

The omission to join all the parties in interest in the suit was not a matter of form, but of law, and could not be dispensed with, except it were shown to be extremely difficult, inconvenient, or expensive. (Allard *vs.* Orleans, Nav. Co., 14 La., 27.)

V. The judgment of the court below should be reversed for want of jurisdiction of the cause in the circuit court, with directions that the suit be dismissed. But if it should be deemed that there was no defect of jurisdiction, we submit that sufficient ground is presented in the erroneous rulings of the court, as above pointed out, for reversing the judgment, and directing a new trial. The result, in this particular case, would, perhaps, be practically the same, whether a reversal takes place

on the one ground or the other, as, under the provisions of the 3d section of the act of July 27, 1868, (15 Stat., 243, 244,) the same matters in defence which have been already pleaded and proved would constitute an effectual bar to any further proceeding in the court below.

E. R. HOAR,
Attorney General.
W. A. FIELD,
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Mr. Geo. Clifford

Supreme Court of the United States.

No. 108. FLANDERS *vs.* TWEED.

To the point, that the defendant in error is not bound to show by the record that the court below did not err, but that the plaintiff in error must show by the record affirmatively that the court did err to his prejudice, and that everything must be presumed in favor of the judgment, which is not concluded by the record, I refer to the following cases, being the same referred to in court; they are not on the briefs:

Pierson *vs.* Burney, 15 Texas, 273, 274.
Owen *vs.* Arrington, 17 Ark., 531, 532.
McGuire *vs.* Kemp, 3 Greene, (Iowa.) 219.
McGavock *vs.* Woodlief, 20 How., 225.
Rich *vs.* Lambert, 12 How., 353, 354.
Laber *vs.* Cooper, 7 Wall., 569 to 571.
Tracy *vs.* Pendleton, 23 Pa. St. R., 172.
Catheart *vs.* The Commonwealth, 37 Pa. St. R., 111.
Estridge *vs.* The State, 25 Ala., 34.

The case of McGuire *vs.* Kemp, (3 Greene, 219,) the judgment entry was in this language: "This cause came on for trial, whereupon the premises being seen and fully understood, it is considered by the court," &c. The law of Iowa authorized a trial by the court by consent of parties, and no consent appeared in the record. The court say:

"This entry is rather informal. It should state that the cause was submitted to the court by the consent of parties, or that a trial by jury was waived." * * * * * "The record shows that the defendant appeared in court, filed a plea, and also made a motion, which was disposed of; and as he took no exception to the manner in which the cause was tried, it must be presumed that he consented to the trial by the court."

See answer putting petition in issue, Record 13.
See motion for new trial, Record 75, 76, 77.

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The case of McGavock *vs.* Woodlief, (20 How., 225,) was a Louisiana case tried by the court. A statement of facts had been drawn up by the judge after the term had expired, and filed *nunc pro tunc* as of the day of trial. There was no consent or request of counsel that the court should do this shown by the record. The court say:

"An objection was made on the argument that the statement of facts could not be noticed, it having been made up after the term in which the cause was tried, and as it did not appear that the court was requested to draw it up at the time of the trial. We are of the opinion, that as the judge has drawn up and filed the statement as of the day of the trial, it is but reasonable to presume that he had been so requested at the trial by counsel for the defendant. We agree that the request must be made at this time in order to enable the court to notice it in error."

The case of Rich *vs.* Lambert, (12 How., 353,) was a case in admiralty on appeal, and new evidence had been taken under rule 27, which required a commission to issue from this court or the circuit court, under the direction of any one of the judges thereof. A commission was issued by the clerk of the circuit court, but it did not appear that there was any order or direction therefor. The court say:

"The objection taken to the evidence is, that it does not appear from the record that any order was obtained from either court for the issuing of the commission. We have, however, before us, the commission itself, issued in the usual form by the clerk of the circuit court, and in the execution of which both parties joined. An order, therefore, must have been entered, or, if not, it was waived by the act of the parties in sueing out the commission and joining in its execution."

In that case the order was presumed to have been entered or to have been waived, from the issuing of the commission and joining in it. That the parties, plaintiffs and defendants, joined in this trial, see the record generally.

In the case of Tracy *vs.* Pendleton, (23 Penna. St. R., 171,) a trial was had by one of the presiding judges of the court out of his judicial district, in the absence of the associate judges, the presiding judge of the district having been of counsel. The day after verdict for the plaintiff the defendant made a motion for a new trial, and alleged this, among other grounds, as a reason for a new trial. It was held that the defendant could not, after having gone to trial before such judge, raise the objection that he had no authority to try the case, and that the Supreme Court would presume the necessity for a special court, and the existence of an arrangement to hold the said court. Among other things, the court say:

"The trial of this cause took place before the president of an adjoining district, at a special court held in Bradford county, for the purpose of deciding causes in which the proper presiding judge had been concerned as counsel. The parties went to trial in the absence of the associate judges, and the want of authority in the presiding judge is now assigned for error. If this be an objection to the right of the judge to hold the court without the aid of the associates, and not a plea to the jurisdiction of the court itself, it is plain that the irregularity is waived by proceeding to trial before him without objection. Like a challenge to a juror, it is waived by a trial upon the familiar principle that a party who has taken his chance for a decision in his favor shall not be allowed to except afterwards to the qualifications of his triers." (Pp. 171 and 172.)

In the case of Catheart *vs.* The Commonwealth, (37 Pennsylvania St. R., 111,) the court say:

"Another specification of error is, that the record does not show that the prisoner had counsel at the trial. It is based upon an alleged presumption against the regularity of the proceedings—a presumption directly opposite to that which we have shown to exist. It assumes that those rights of the prisoner were denied to him which the record does not show affirmatively granted. As well might it be assumed that the court charged the jury erroneously, and the Commonwealth required to prove that the charge was in all points correct, even before it is attacked. The right to be heard himself and by counsel is doubtless a constitutional right, and if it had been denied there would have been error. But we are not to presume that it was denied, because the record does not exhibit the fact that it was accorded."

In that case the question was raised the day after the verdict, on motion for new trial. In this the court will find that the objection is not raised in the motion for a new trial. (Record, pp. 75, 76 and 77.)

In the case of Pearson *vs.* Burney, (15 Texas, 273,) it appeared that the court commenced on the 6th of November, 1854, that the petition was filed on the 9th, and the answer on the same day, and there was judgment by default, the date of which did not appear, and from which the defendant prosecuted a writ of error. The judgment was affirmed upon the presumption that the judgment was taken on the fourth day of the term, and that the answer was withdrawn at the time of the entry of the judgment by default, or that the counsel had failed to bring his answer to the attention of the court.

In the opinion of the court, the whole matter is thus concisely stated:

"Everything must be presumed in favor of the judgment which is not concluded by the record. Hence, we must presume that the answer

was withdrawn, or that counsel failed to bring it to the attention of the court, rather than that the court improperly gave judgment by default, notwithstanding the answer."

In this case the court is asked to presume that the court below usurped the province of the jury, against the wishes of the defendants, though nothing of the kind appears, because, shutting out the statement of fact, the record does not show that the proper stipulation was filed with the clerk!

In the case of Owen *vs.* Arrington, (17 Ark., 532,) the court held that it would presume that a motion for a new trial which did not appear to have been disposed of, had been abandoned, and that—

"Independently of the ordinary presumption in favor of the regularity of the proceedings of the circuit court, this court will presume that the cause was regularly tried by the court on all the issues—being issues of fact—though not so stated of record, where the judgment states a finding by the court of all the facts necessary to sustain the judgment."

That was an action on a note, in which want of title in the plaintiff and payment were pleaded. The record did not show that the cause was submitted to the court, though it did appear that the court found the facts.

In the case of Eskridge *vs.* The State, (22 Ala., 34,) the court say:

"The rule requires the party who asserts that the court committed an error, to make the record affirmatively show it."

There are other authorities to the same effect, but I do not feel authorized to refer to them now, as they were not cited to the court when the question was raised; nor do I feel that I have, at this time, any right to argue the point, or do more than present, precisely and distinctly, what was determined in these cases.

All of which is respectfully submitted.

T. D. LINCOLN,
of Counsel for Defendant in Error.